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ABSTRACT

Implementation of the Worker Adjustment and Retraining Notification (WARN) Act was studied to determine the number of plant closures and layoffs subject to the provisions of the act, whether employers are providing advance notice as required, the difficulties involved in implementing and enforcing WARN, and the views of employers and employees on the impact of giving or receiving WARN notices. Data were gathered through analysis of closures and layoffs in 11 states, with particular attention paid to the size of the employer, the size of the layoff, and the provision of notice to employees and to state agencies. The study found the following: (1) employers were more likely to give their workers advance notice after WARN was enacted; (2) exceptions to WARN excluded many layoffs and closures from notice requirements; (3) many employers did not provide notice, and many of those who did did not provide the 60 days' notice required by WARN; (4) employers are unclear about WARN provisions; and (5) employers cited benefits for workers (advanced notice helped them find jobs faster), but negative effects on the business (lower worker morale and productivity). (The report contains 2 tables and 10 figures as well as 8 appendixes that contain further information about WARN and survey data.) (KC)

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United States General Accounting Office

GAO

Report to Congressional Committees

February 1993

ED 392 968

DISLOCATED WORKERS

Worker Adjustment And Retraining Notification Act Not Meeting Its Goals

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United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division

B-243890

February 23, 1993

The Honorable Edward M. Kennedy
Chairman, Committee on Labor and
Human Resources
United States Senate

The Honorable Dale L. Bumpers
Chairman, Committee on Small Business
United States Senate

The Honorable William D. Ford
Chairman, Committee on Education
and Labor
House of Representatives

The Honorable John J. LaFalce
Chairman, Committee on Small Business
House of Representatives

This report responds to the requirements in the Worker Adjustment and Retraining Notification Act and to your requests for information about the implementation of the law. It contains matters for congressional consideration.

Copies of this report are being sent to the Secretary of Labor; the Director, Office of Management and Budget; and other interested parties.

This report was prepared under the direction of Linda Morra, Director, Education and Employment Issues, who may be reached on (202) 512-7014 if you have any questions concerning the report. Other major contributors are listed in appendix VIII.

Lawrence H. Thompson

Lawrence H. Thompson
Assistant Comptroller General

Executive Summary

Purpose

The Department of Labor has reported that the number of plant closures and mass layoffs affecting 50 or more workers was about 3,100 in 1990 and increased to nearly 3,900 in 1991. As a result of these closures and layoffs, over a million workers lost their jobs.

Many of these dislocated workers need help to find a new job. Whether this assistance succeeds often depends on how early help is provided by state and local agencies. However, a 1987 GAO study found that few workers had enough advance notice of a business closure or major layoff to give them time to obtain assistance before or at the time of layoff.[1] To help achieve early intervention, the Congress enacted the Worker Adjustment and Retraining Notification Act (WARN) in 1988. WARN requires that certain employers give workers and state and local government officials 60 days' notice of an impending closure or layoff.

WARN also requires that GAO report to the House and Senate Committees on Small Business, the Senate Committee on Labor and Human Resources, and the House Committee on Education and Labor on the implementation of the law. As agreed with these committees, GAO is reporting on (1) the number of closures and layoffs subject to the provisions of WARN, (2) whether employers are providing advance notice as required, (3) the difficulties involved in implementing and enforcing WARN, and (4) the views of employers and employees on the impact of giving or receiving WARN notices.

Background

WARN requires employers with 100 or more full-time workers to give their workers, the state's dislocated worker unit, and the chief elected official in the area at least 60 days' notice before implementing a closure or layoff. The thresholds for when a notice is required differ slightly for a closure and a layoff. Notice is required for a closure that affects 50 or more full-time workers. Notice is also required for a layoff that affects 50 or more workers who represent one-third or more of the work force or that involves 500 or more workers.

Employers are exempt from the notice requirement when the closure or layoff is due to such factors as completion of a contract and strikes or lockouts. WARN also allows employers to provide less than 60 days' notice under certain exceptions, such as when (1) employers are seeking new customers or trying to raise capital or (2) the closure or layoff is due to

[1]Plant Closings: Limited Advance Notice and Assistance Provided Dislocated Workers (GAO/HRD-87-105, July 17, 1987).

unforeseen business circumstances or natural disasters. Employers relying on these exceptions must state so in the notice.

The Congress did not assign any agency the responsibility for administering or enforcing WARN. Labor was required to prepare implementing regulations. In addition, Labor has developed educational programs and information about WARN to aid in understanding the law. However, Labor is not responsible for administering or enforcing the provisions in WARN or the implementing regulations. The federal courts are the sole enforcement tool available under WARN.

To review the implementation of WARN and its effects on employers and workers, GAO used several approaches. To determine the number of closures and layoffs that appeared subject to WARN, GAO analyzed all such events identified in 11 states—Alabama, Florida, Illinois, Kentucky, Minnesota, New Jersey, New York, Pennsylvania, Texas, Washington, and Wisconsin—which account for 55 percent of the closures and layoffs reported in the 1990 Bureau of Labor Statistics' Mass Layoff Statistics Program. GAO analyzed each event to determine whether (1) the employer had 100 or more workers, (2) the event resulted in the layoff of 50 or more workers and one-third of the work force, and (3) the reason for the event justified an exemption from the WARN notice requirement. However, the Bureau's program does not generate detailed information about all the circumstances involved in each event, and the Bureau's confidentiality pledge to employers prevented GAO from contacting the employers directly. Therefore, GAO cannot conclusively determine whether every event that appeared to meet the WARN criteria actually met each provision of the law.

To determine how many employers provided advance notice of the closures that appeared to meet the WARN criteria, GAO matched the reported closures with notices filed with state dislocated worker units. GAO also reviewed a nationwide sample of WARN notices for timeliness and completeness of information. In addition, GAO surveyed a random sample of employers who filed WARN notices about their familiarity with the requirements of the law and the effects of advance notice on their businesses and their workers. GAO also talked with staff from several states' dislocated worker units, as well as several groups of dislocated workers.

Results in Brief

Workers were more likely to receive 60 days' notice of a closure or layoff after the enactment of WARN; however, many large events are excluded from the law's notice requirements. In the 11 states reviewed, about half of the employers with 100 or more workers that closed or had a layoff in 1990 were not required to provide notice. Many of these events were layoffs that were exempt because they did not affect one-third of the work force.

Even when events appeared to meet the WARN criteria, many employers either did not provide a notice as required by WARN or provided less than 60 days' notice. About half of the closures analyzed did not have a WARN notice on file with the state dislocated worker unit. In addition, about a quarter of the WARN notices filed gave workers less than 60 days' notice and did not cite an exception. Despite these possible violations, few court cases have been filed since the law was enacted in 1988.

Employers may not be filing notices because of confusion about WARN. Labor developed implementing regulations to clarify some of the provisions in the law. Labor also has distributed a brochure and conducted seminars to help educate employers and workers about WARN. Despite these efforts, a third of the employers GAO surveyed said they were unclear about or unaware of specific provisions in WARN. Labor officials reported that since WARN was enacted in 1988, they have received over 20,000 calls asking about the law's requirements.

Many employers who gave advance notice said it was beneficial for their workers, but some said it was detrimental to their businesses. They reported that they believe that workers receiving notice found new jobs more quickly than if they had not been given notice. However, some employers said that they believe worker productivity decreased after they gave the notice.

Principal Findings

Notices More Likely Since Enactment of WARN

Employers were more likely to give their workers advance notice after WARN was enacted. Based on data from a 1987 GAO study, between 11 and 18 percent of the employers with closures or layoffs affecting large business establishments (250 or more employees) gave their workers at least 60 days' notice. Using the data from our current analysis, we estimate

that about 30 percent of the employers experiencing such an event in 1990 gave 60 days' or more notice.

Exemptions in WARN Exclude Many Events From Notice Requirements

WARN exempts many major layoffs from the notice requirements. Overall, 52 percent of the 806 events analyzed were exempt from WARN's requirements. Layoffs accounted for 650 (81 percent) of the events analyzed and 415 (98 percent) of the events exempt from WARN. The majority of layoffs were exempt from WARN because they did not affect one-third of the workers. Even when the layoffs were large—affecting 250 or more workers—41 percent were exempt from WARN. About 57 percent of these were exempt because they did not affect one-third of the work force.

Many Employers Did Not Provide Notice

Many employers did not provide advance notice to state dislocated worker units when they experienced a closure that appeared to meet the WARN criteria. GAO found that 54 percent of the employers did not provide state dislocated worker units with advance notice of the closures even though these closures appeared to meet all of the criteria set forth in WARN.

In addition, when employers provided notice, some did not provide workers the 60 days' notice required by WARN. A nationwide sample of 397 randomly selected notices filed by employers showed that about 29 percent provided workers less than 60 days' notice without citing a valid exception. Employers were even slower in providing notice to state dislocated worker units. About 15 percent of the notices received by state dislocated worker units provided less than 30 days' notice.

Despite the many instances in which employers did not file notices or filed them late, most workers have not sought legal remedies through the federal courts—the only means of enforcing the provisions in WARN. As of December 1992, GAO was aware of only 66 court cases filed since the law took effect. Attorneys and local officials GAO interviewed cited costs, limited incentives, and uncertain outcomes as obstacles to filing suits.

Employers Unclear About WARN Provisions

Many employers were unclear about or unaware of some of the provisions in the law or Labor's regulations. The Secretary of Labor is responsible for issuing whatever regulations may be needed to carry out the law. However, a survey of a random sample of employers who filed notice

showed that 32 percent reported they were unclear about or unaware of at least one provision used to determine if a notice is required.

The general language of WARN and the lack of clear implementing regulations may be contributing to the lack of understanding of the law by employers and workers. For example, WARN applies to closures and layoffs occurring at a "single site of employment." To clarify this language, Labor's regulations identified eight factors that must be considered in determining what is a single site of employment. Although Labor's implementing regulations defined these terms, many employers are still confused.

Employers Cited Benefits for Workers, but Some Businesses Reported Negative Effects

Some employers who gave their workers notice believe this was a factor in workers finding jobs quickly. About 47 percent of the employers who gave a WARN notice reported that, as a result of providing advance notice, their workers found jobs more quickly than they would have otherwise. Representatives of several worker groups also reported that workers began adjusting to the job dislocation and seeking help sooner because they received notice. Workers and researchers agree that advance notice allows workers time to develop a plan of action before they actually lose their jobs and the related benefits.

Despite predictions that providing advance notice to workers would be costly, 61 percent of the employers who filed notices reported that they experienced little or no costs ($500 or less) in providing the WARN notice. However, 29 percent of the employers surveyed reported that after giving notice they experienced problems, such as lower worker productivity.

Matters for Congressional Consideration

Given the large number of closures and layoffs for which employers did not provide advance notice even when the event appeared to meet the WARN criteria, the Congress may wish to consider giving the Department of Labor the specific responsibility and authority for enforcing the law's provisions.

Agency Comments

The Department of Labor concurred with GAO's conclusion that the enforcement provisions of WARN have not been adequate. However, Labor did not take a position on whether it should be given the responsibility and authority to enforce the law's provisions (see app. VII).

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Abbreviations

BLS	Bureau of Labor Statistics
DWU	Dislocated Worker Unit
MLS	Mass Layoff Statistics
WARN	Worker Adjustment and Retraining Notification Act

Introduction

Based on the Bureau of Labor Statistics (BLS) data from the Mass Layoff Statistics (MLS) program, the Department of Labor reported 3,078 plant closures or mass layoffs affecting 50 or more workers in 1990. In 1991, the number of events increased by 26 percent to 3,891. As a result of these events in 1990 and 1991, about 1.4 million workers lost their jobs.[2]

Many of these dislocated workers needed counseling and training to help them adjust to the job loss and find new employment. The success of this assistance is often related to how early it is provided. Dislocated worker studies report that far more workers seek assistance when help is available before or at the time of job loss than when it is available only after the workers have lost their jobs or benefits. For example, one report found that participation in assistance programs appeared two to three times higher when assistance was given around the time of a plant closing rather than a year to 18 months afterward.[3] In addition, an evaluation of the Buffalo Dislocated Worker Demonstration Program concluded that a low participation rate was caused, in part, by the long average time between layoff and program recruitment.[4] That same evaluation reported that the Philadelphia Area Labor Management Committee found that between 70 and 80 percent of the employees participated in assistance activities that were offered before layoff; however, the participation rate was less than 20 percent in activities offered after layoff. These studies also suggest that early assistance is also more cost effective because workers who receive assistance early get jobs sooner and that workers earn more than they would have without such help.

Our 1987 survey of business establishments experiencing a closure or permanent layoff showed that relatively few employers gave their workers notice adequate to establish an effective worker assistance program.[5] About 32 percent of the employers did not provide any notice, and the median length of notice provided was 7 days.

[2]The MLS 1990 and 1991 data did not include data from all states. In 1990, data were not available for California, Indiana, Maryland, Michigan, Ohio, and Oregon. In 1991, data were not available for California, Ohio, and Oregon for any quarter in 1991. See appendix I for an explanation of the MLS.

[3]Balfe and Fedrau, Review and Analysis of Company/Union Sponsored Comprehensive Displaced Worker Assistance Centers Receiving JTPA Title III Support, April 1986.

[4]Mathematica Policy Research, Inc., An Impact Evaluation of the Buffalo Dislocated Worker Demonstration Program, March 1985.

[5]Plant Closings: Limited Advance Notice and Assistance Provided Dislocated Workers (GAO/HRD-87-105, July 17, 1987).

Business leaders[6] recognized the benefits of advance notice and that notice is needed to provide time to

- plan and implement programs to help workers adjust to their dislocation and find reemployment,
- increase worker participation in adjustment programs, and
- improve the efficiency and effectiveness of adjustment programs by helping workers find comparable jobs faster.

However, they also expressed concerns about a law requiring advance notice. Business was concerned about what financial impact notice would have on companies and whether notice could increase the likelihood that the companies would lose credit. They were also concerned that employers could not give advance notice when faced with sudden, unforeseen business circumstances. In addition, they were afraid that giving notice would lead to reduced productivity. They argued that notice could make it worse for businesses already facing a difficult financial situation.

However, our 1987 analysis of the closures and layoffs showed that most employment reductions and closures resulted from the efforts of well-established employers to improve efficiency rather than from bankruptcy. Most officials said that the closures or layoffs were an effort to improve efficiency by consolidating facilities or product lines, acquiring additional facilities, closing obsolete facilities, or automating production. Officials at only 8 percent of the affected establishments said their business had experienced a financial reorganization or dissolution under bankruptcy proceedings.

WARN Intended to Meet Workers' Needs While Addressing Employers' Concerns

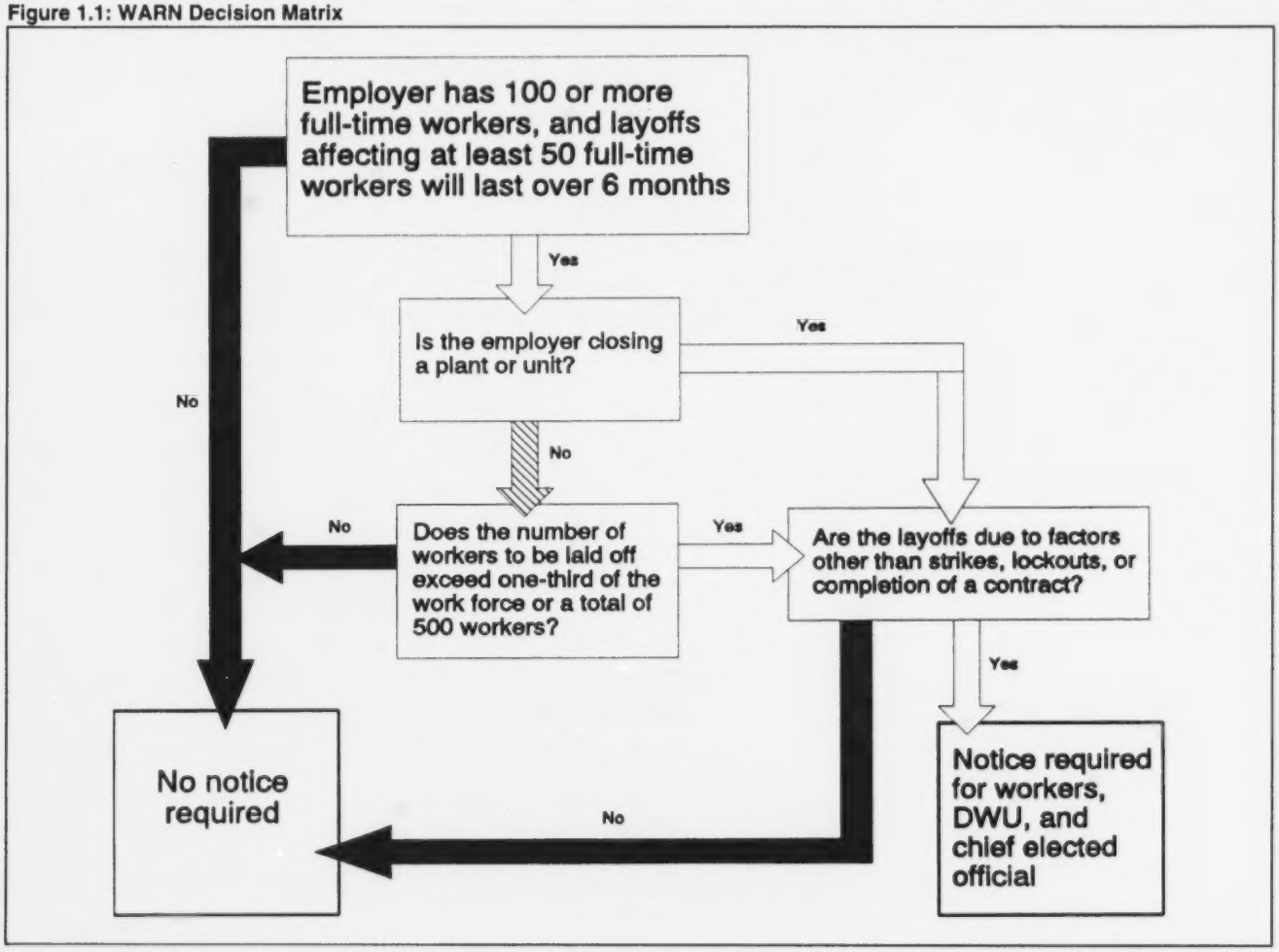
The Worker Adjustment and Retraining Notification Act (WARN) represents a compromise between the workers' need for advance notice and the concerns of business. WARN requires employers to provide 60 days' notice of a closure or layoff to the workers or their representatives, the chief elected official in the local area, and state dislocated worker units (DWUs).[7] However, not all employers or their closures or layoffs are covered by WARN.

[6]Included the Conference Board, Business Roundtable, Committee for Economic Development, and the National Association of Manufactures as reported in GAO/HRD-87-105.

[7]DWUs were required under the Economic Dislocation and Worker Adjustment Assistance Act to coordinate services provided to dislocated workers. Providing WARN notice to the DWU often begins the process of assisting workers who will be dislocated.

As shown in figure 1.1, smaller employers (those having fewer than 100 workers) are not required to give notice. Employers with 100 or more workers also may be exempt from filing a WARN notice in certain instances, such as where work terminates upon completion of a contract and workers were informed they were being hired only for the duration of the contract. Lastly, layoffs affecting 50 or more full-time workers (up to 500 workers) that do not affect one-third of the employer's work force at the layoff location are exempt from WARN.

Figure 1.1: WARN Decision Matrix


Employer has 100 or more full-time workers, and layoffs affecting at least 50 full-time workers will last over 6 months
Yes
Is the employer closing a plant or unit?
Yes
No
No
Does the number of workers to be laid off exceed one-third of the work force or a total of 500 workers?
No
Yes
Are the layoffs due to factors other than strikes, lockouts, or completion of a contract?
Yes
No notice required
No
Notice required for workers, DWU, and chief elected official

Note: The matrix provides an overview of how employers, workers, and chief elected officials can determine if a closure or layoff meets the criteria for filing a WARN notice. Labor's Final Rules describe in more detail various situations where WARN applies. See 54 Fed.Reg. 16042 (1989) (codified at 20 C.F.R. part 639).

Employers may also give less than 60 days' notice if employment was terminated due to a faltering business situation, unforeseen business circumstances, or natural disasters. An example of faltering business

would be when an employer is attempting to refinance a loan and reasonably believes that giving notice would jeopardize that effort.[8] Unforeseen business circumstances include such events as fires or actions related to public health or safety. Natural disasters include tornados or droughts. Employers who give less than 60 days' notice must include the reason in the notice given to the workers and state and local officials.

No Entity Responsible for Administering or Enforcing WARN

The Congress did not assign any agency the responsibility for administering or enforcing WARN, although Labor was required to prepare implementing regulations. In addition, Labor has developed educational programs and information about WARN to aid in understanding the law. However, Labor is not responsible for enforcing the provisions in WARN or the implementing regulations.

The federal courts are the sole enforcement tool under WARN and are limited, by law, when assessing penalties. Workers or local governments that believe an employer did not file the required notice must file a lawsuit to obtain remedy. Penalties under WARN are limited to a maximum of 60 days' back pay and benefits for workers and up to $500 per day, up to 60 days, for local governments. The courts may reduce the penalty for each day the employer gave notice or for any wages paid during the violation period, and they may award the winning party reasonable attorney's fees.

Objectives, Scope and Methodology

The legislation required us to report on the implementation of WARN to the House and Senate Committees on Small Business, the Senate Committee on Labor and Human Resources, and the House Committee on Education and Labor. Based on discussions with the committees, we focused on the following objectives.

- Determining the number of closures or layoffs subject to WARN.
- Assessing whether employers are providing notice as required by WARN.
- Identifying problems in implementing and enforcing provisions of WARN.
- Obtaining the views of employers and workers on the impact of WARN.

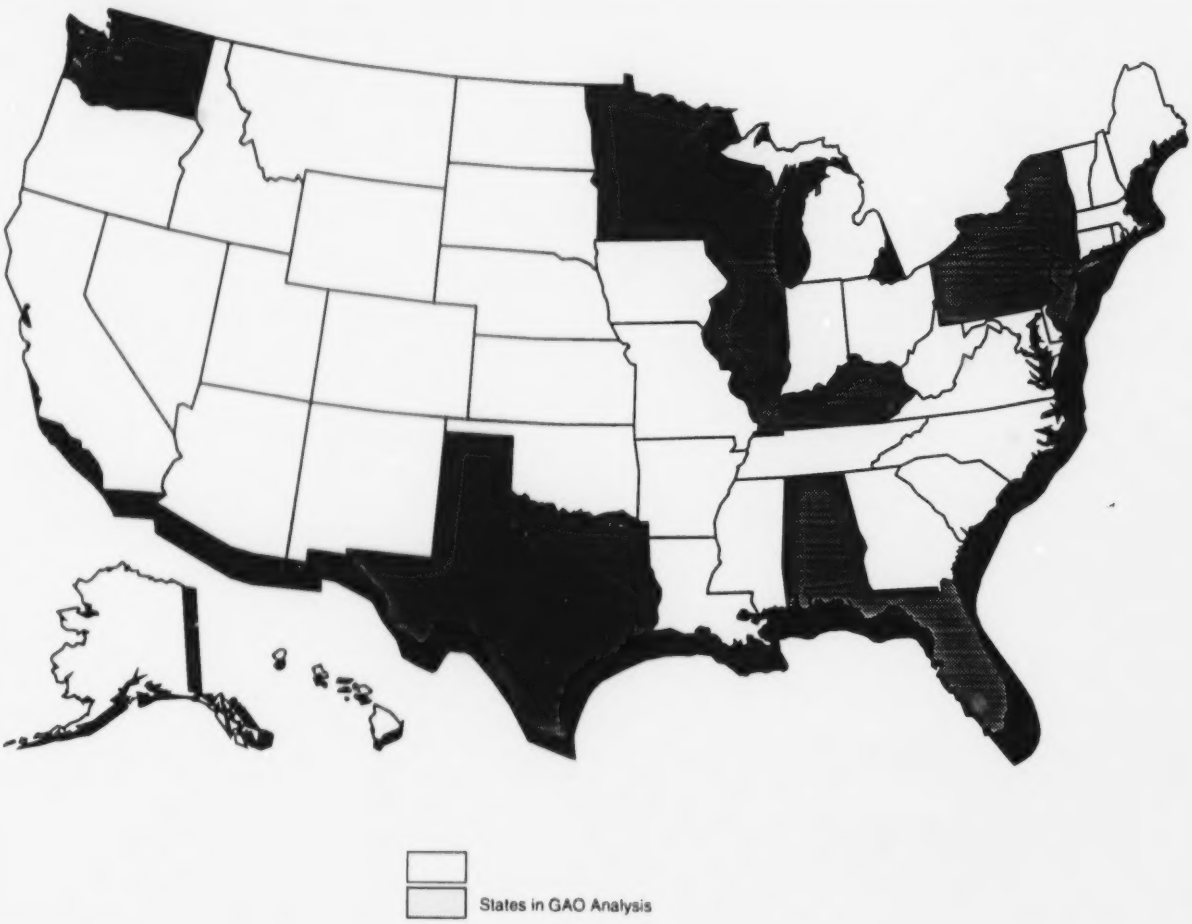
Following is a description of the scope of our work and the approaches we used to review the implementation of WARN and its effects on employers and workers.

[8]This exception requires that the loan would be used to help prevent or postpone the closure or layoff.

Determining the Number of Closures and Layoffs Subject to WARN

To determine the number of closures or layoffs subject to WARN, we obtained 1990 data from the MLS in 11 of the 45 states for which data are available. The states selected for review are shown in figure 1.2.[9]

Figure 1.2: States in GAO Analysis



[9]We tested the use of the MLS in three states—Minnesota, Wisconsin, and Kentucky. Following this test, our scope was extended to 11 states which included the 10 states with the highest number of MLS reported events. Minnesota and Wisconsin are in the top 10. The 1,606 closures and layoffs reported by these 11 states represent 55 percent of all the events on the 1990 MLS.

From the 1,606 closures and layoffs identified in MLS as having affected 50 or more workers, we examined the 806 nonseasonal events involving a total work force of 100 or more. We analyzed these events to determine if they were related to any circumstance that would exempt them from WARN.[10] We next determined how many layoffs were not covered by WARN because they did not affect one-third of the work force. Based on this analysis, we were able to determine the number of events that appeared to meet the WARN criteria. However, the MLS does not generate sufficiently detailed information about all the circumstances involved in each event, and the BLS confidentiality pledge to employers prevented us from contacting the employers directly. Therefore, we cannot conclusively determine whether every event that appeared to meet the WARN criteria actually met each provision of the law.

Determining the Extent to Which Employers Provided Notice as Required by WARN

To analyze the extent to which employers are providing notice as required by WARN, we used three approaches:

- Matching MLS data on closures from the 11 states to WARN notices filed with those states' DWUs to determine whether employers filed notices as required.
- Reviewing a nationwide sample of randomly selected WARN notices to determine if employers met the 60-day notice requirement.
- Reviewing the random sample of WARN notices to determine if they contained specific information required by Labor's regulations.

First, we worked with BLS to identify closures in the MLS data for the 11 states that appear to meet the requirement for filing a WARN notice. We then compared the 149 closures identified to lists of notices filed with the DWUs in those states.[11] We did not determine the reasons notices were not provided because confidentiality agreements between GAO and BLS did not allow us to contact individual employers identified in the MLS data.

Next, we assessed whether the notices filed by employers met the 60-day notice requirement. To measure the timeliness of the notices, we obtained lists of WARN notices filed for closures or layoffs occurring in 1990 from the DWUs in each state and the District of Columbia. From these lists, we randomly selected 397 notices (see app. II for a description of the

[10]These and other exemptions are defined in appendix I.

[11]We also matched layoff events with WARN notices filed with the DWUs, but did not report on the findings because of data limitations on layoffs tracked by MLS. MLS only tracks workers in 21-day cycles and does not maintain data on the length of the layoff. These data are key in determining if a notice is required by WARN.

methodology used to select notices). This sample also served as the basis for our analysis of the quality of the notices and our survey of employers' experiences with WARN.

Our review included determining the timeliness of the notices to both the workers and the DWUs. We measured the timeliness of the notices to the workers by comparing the date of the event to the date on the notice. We measured the timeliness of the notices to the DWU by comparing the date the DWU received the notice to the date of the event. WARN states that the DWU must receive the notice 60 days before the event. We also analyzed whether the notices that did not meet the 60-day requirement cited an exception.

Lastly, we determined what specific information about the layoffs or closures employers included in their notices. Labor's WARN regulations require that employers, at a minimum, provide specific information about four elements in their notice to the DWUs. Other data elements are required to be provided upon request by the DWU. We reviewed our random sample of 397 notices to assess whether they contained the minimum information required (see app. III for the information required in WARN notices).

Identifying Problems in Implementing and Enforcing WARN

To identify problems in implementing WARN and enforcing it through the courts, we

- surveyed employers to determine their understanding of the provisions in WARN,
- reviewed the assistance and educational information provided by Labor to states, employers, and workers, and
- obtained information related to the use of the courts for enforcing WARN.

Our survey of employers who gave WARN notices in 1990 for the 397 randomly selected closures or layoffs included questions about the definitions of who should file a notice and several other provisions in WARN. The questionnaire we used is shown in appendix IV. We received responses from employers for 251 (63 percent) of the events in our sample.

We also interviewed federal, state, and local government officials, as well as worker and employer groups, about implementing WARN. We focused on two aspects of the implementation: (1) the education of states, employers,

and workers about the law and (2) the effectiveness of the administration and oversight of WARN.

Working with the Maurice and Jane Sugar Law Center, we obtained information on the cases filed since the enactment of WARN, including the litigants, the year and where the lawsuit was filed, and the outcome.[12] We also interviewed attorneys, state and local officials, employers, and workers about the use of the courts for enforcing WARN.

Obtaining Views of Employers and Workers on the Impact of WARN

To assess the impact of WARN on workers and employers, our survey of employers who filed notices asked about the positive and negative impact of giving notice. We asked if notification contributed to a number of outcomes, including workers' getting jobs sooner and the loss of workers, customers, and productivity. We also asked about the costs associated with preparing and giving notice. We also interviewed workers, local elected officials, and DWU staff in 16 states. A list of the states contacted or visited during our review is in appendix VI.

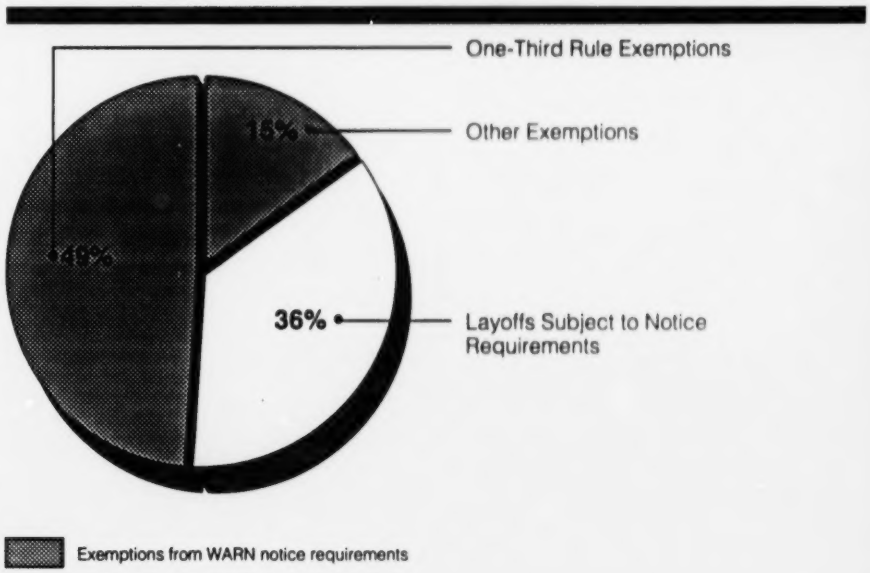
Our work was performed between July 1991 and October 1992 in accordance with generally accepted government auditing standards.

[12]The Maurice and Jane Sugar Law Center for Economic and Social Justice, established in 1991, is a national litigation project of the National Lawyers Guild. The center conducts research and handles litigation in the areas of worker and economic rights, civil rights and racial justice. A summary of all WARN cases as of December 1992 is in appendix V.

Many Events Are Exempt From WARN Notice Requirements

Many major layoffs are exempt from the notice requirements in WARN. Of the 650 layoffs we analyzed that affected 50 or more workers in facilities employing at least 100 workers (two of WARN's criteria), 415 (64 percent) were exempt from the notice requirements of WARN (see fig. 2.1). Most were exempt because they did not affect at least one-third of the work force at the layoff location. Even when layoffs affected 250 or more workers, many of the layoffs were exempt and the employers were not required to provide advance notice to their workers.

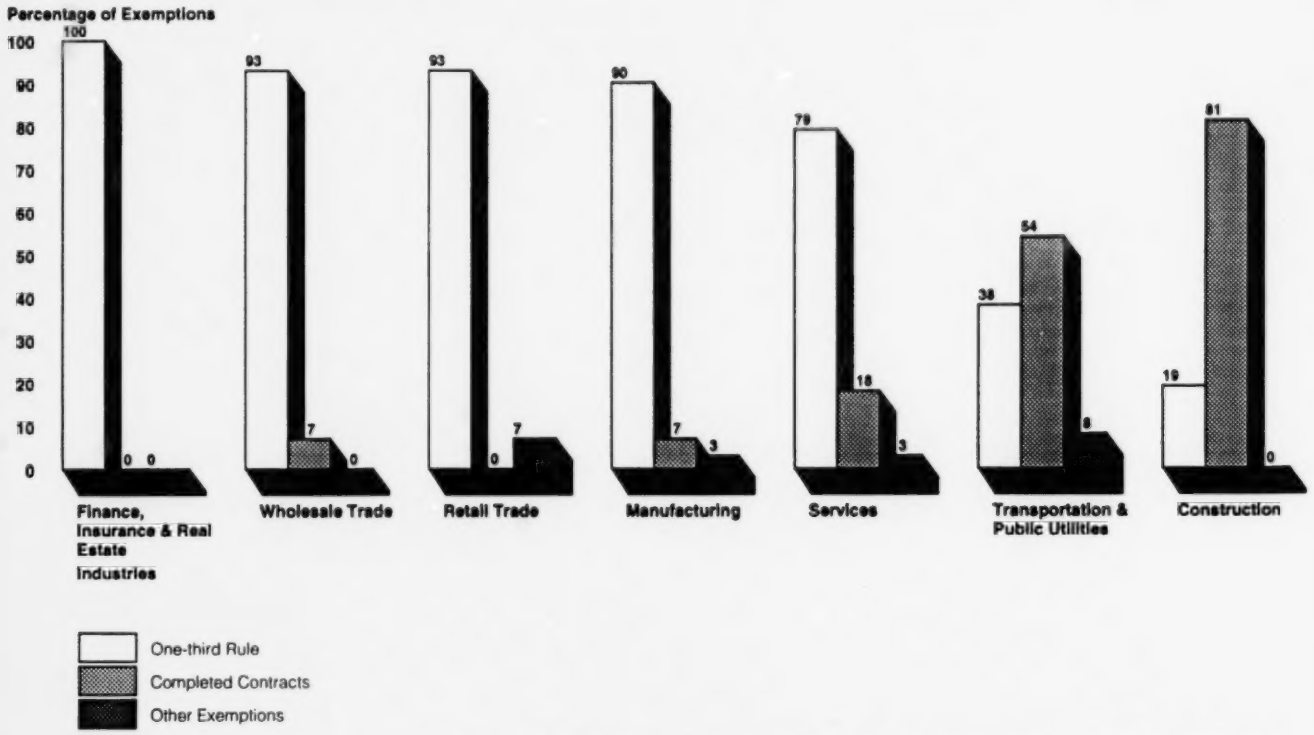
Figure 2.1: Percentage of Layoffs Exempt From WARN Even Though the Events Affected 50 or More Workers at Facilities Employing at Least 100 Workers



One-Third Rule Exempts Many Layoffs From WARN

The one-third rule was the dominant reason that layoffs were exempt from WARN coverage. Overall, about 76 percent of the 415 exempt layoffs were excluded from WARN because they did not affect at least one-third of the work force at the layoff location. Manufacturing companies account for about 64 percent of all the layoffs, and about 90 percent of the exemptions that occur in this industry are due to the one-third rule. Most other industries also followed this pattern. Exceptions were in the construction and the transportation and public utilities industries, where completed contracts accounted for a majority of the exemptions. Figure 2.2 provides a breakdown of the percentages by industry.

Figure 2.2: Percentage of Exemptions by Industry



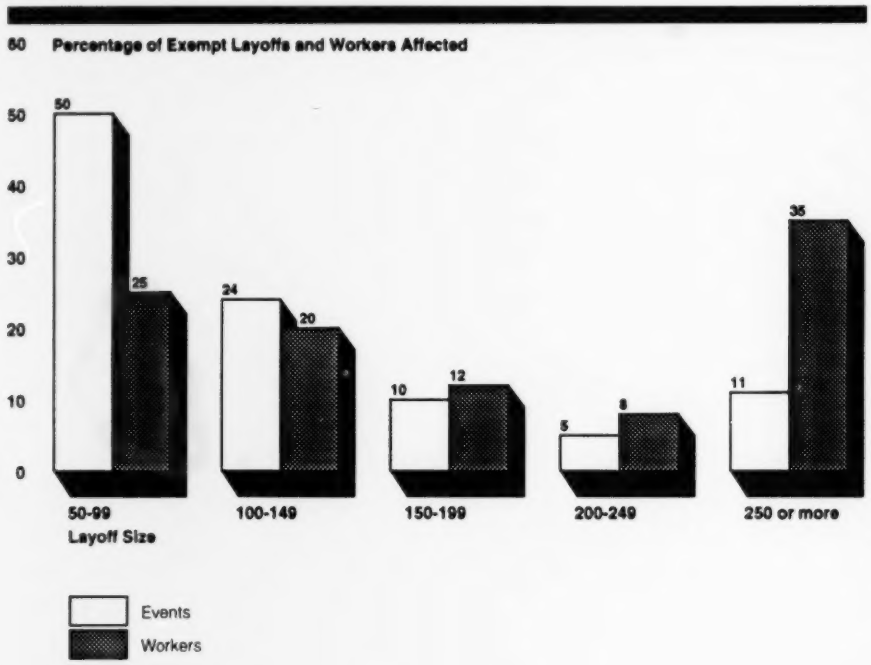
Note: Several industries, including agriculture, mining, and transportation and public utilities, had fewer than 10 layoffs fitting any of the exemptions.

Large Layoffs Exempted From WARN Affect Many Workers

The one-third rule exempts many large layoffs from the requirements of WARN. Of the 115 layoffs affecting 250 or more workers, 47 (41 percent) were exempt from coverage under WARN. Similar to smaller layoffs, most of these exempt layoffs also were excluded from WARN because they did not affect one-third of the work force.

The 47 large layoffs exempt from WARN accounted for only 11 percent of all exempt layoffs. However, they affected more than 19,700 workers, or 35 percent of all workers in our analysis that were affected by the WARN exemptions (see fig. 2.3).

Figure 2.3: Percentage of Exempt Layoffs and Workers Affected by Layoff Size



Many Employers Did Not Provide Adequate Notice of Closures or Layoffs

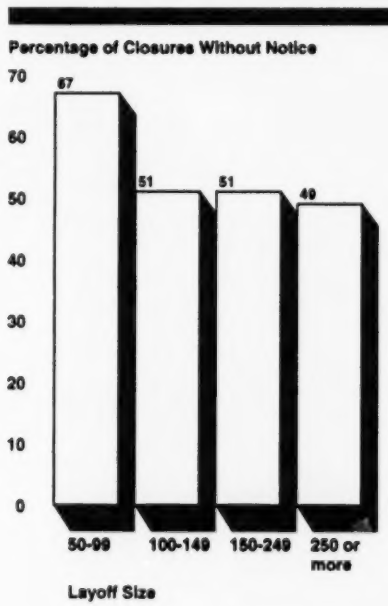
Many employers have not provided advance notice of closures and layoffs to state dislocated workers units. These employers did not (1) file notices with workers, (2) provide notices 60 or more days before the closure or layoff, or (3) provide all the information that Labor requires in the notice. However, workers have rarely sought remedy through the courts.

Many Employers Did Not File WARN Notices

For half the closures analyzed, employers did not provide advance notice to state dislocated worker units even when the event appeared to meet the WARN criteria. In matching 149 closures identified by the MLS in 11 states to WARN notices received by the state DWUs, we found that 54 percent of the employers expecting a closure that appeared to meet the WARN criteria did not provide a notice to the DWU.

No WARN notice was provided for many large closures as well. As shown in figure 3.1, 49 percent of the 37 closures affecting 250 or more workers also did not have a notice.

Figure 3.1: Percentage of Closures Without Notices by Layoff Size

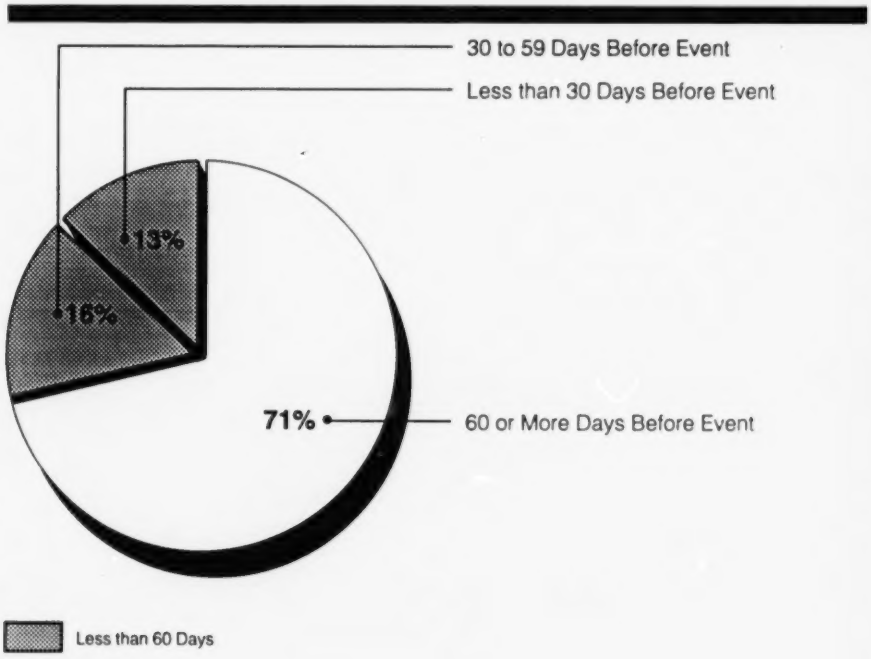


Many WARN Notices Were Late

About 29 percent of the employers experiencing a layoff or closure did not give workers the required 60 days' notice. Employers were even slower in getting notices to state DWUs.

Our analysis of 397 notices randomly selected from the notices filed with DWUs for closures and layoffs that occurred in 1990 showed that 97 gave workers less than 60 days' notice of the closure or layoff and did not cite any of the exceptions permitted in WARN. Nearly half of these late notices provided less than 30 days' notice (see fig. 3.2).

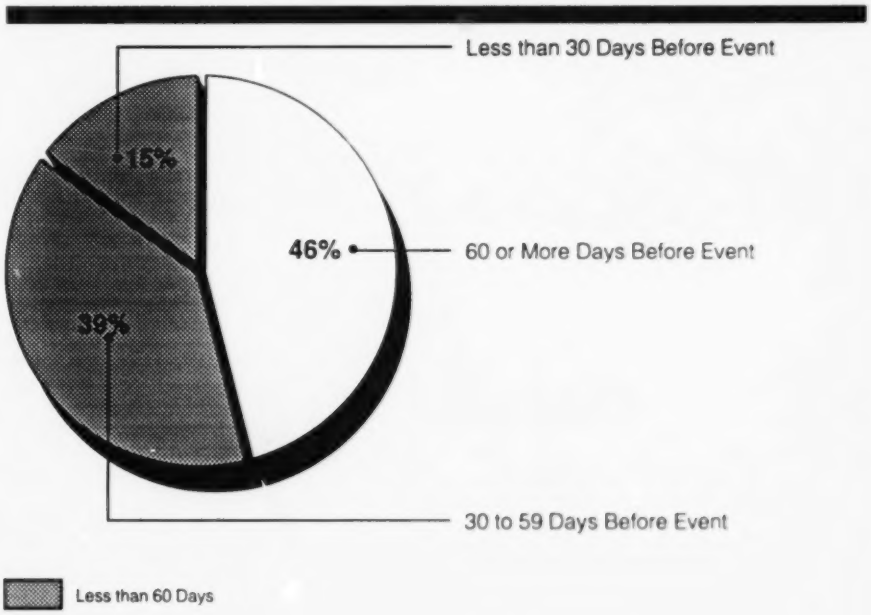
Figure 3.2: Timeliness of Notices Provided to Workers



Some employers were also slow in providing notice to state DWUs. As discussed earlier, the success of worker assistance is often related to how early help is provided. Notice to the DWU is needed to provide time to plan and implement programs to achieve early intervention. However, as shown in figure 3.3, for the 397 notices in our sample, about 54 percent of the employers gave state DWUs less than 60 days' notice. About a fourth of

these employers gave DWUs less than 30 days' notice. And, in 20 cases, the notices did not reach the DWUs until after the closure or layoff occurred.

Figure 3.3: Timeliness of Notices Provided to DWUs



Notices arriving late to DWUs can sometimes be explained by delayed mail, misdirected notices, or uninformed employers. DWU officials stated that employers often mailed the notices 60 days before the event without considering the time needed for mail delivery. However, the law and regulations require that the notice be received by the state DWU 60 days before the event. Other employers sent their notice to the incorrect contact person, such as the governor, or did not know they were required to provide notices to DWUs and merely gave notice to the workers.

Most Notices Contain Required Information

Most employers provided the minimum information required by WARN in their notices to the DWUs. WARN requires employers to include in the notices specific information about the layoff or closure. Notices must include, at a minimum: (1) the name and address of the employment site, (2) the name and telephone number of the company official to contact for

further information, (3) the expected date of the first separation, and (4) the number of affected workers.[13]

Of the 397 notices in our analysis, 310 (78 percent) gave the DWUs the specific information required. Of the notices not including all of the information, the number of the affected workers was most often missing. Table 3.1 shows the percentage of notices not including at least one of the four required pieces of information.

Table 3.1: Percentage of Notices Lacking Required Information

Information not included in notice	Percentage of notices
Number of affected workers	10
Name and address of employment site	9
Name and number of company official to contact	9
Expected date of first separation	2

Note: Some notices omitted information from more than one category.

Enforcement Through Federal Courts Viewed as an Obstacle

Despite the possible violations of WARN described earlier, few lawsuits have been filed since the law was enacted. As of December 1992, we were aware of 66 lawsuits that had been filed by workers, unions representing workers, or states.[14] Of those filed, none were brought by local elected officials. According to local elected officials, workers, and attorneys, few suits have been filed because of (1) the cost, (2) limited incentives, and (3) uncertain outcomes.

Attorneys and local officials cited cost as one of the reasons few suits have been filed. Attorneys who had filed suits on behalf of workers reported that workers generally were hesitant to file because of expense of hiring an attorney. One local official said that communities may also be hesitant to file due to the up-front cost of researching and filing a lawsuit. Another official, from a small city, stated that only a large city or county would have the money, willpower, and legal staff to see a case through to completion.

[13]Labor requires this information as a minimum, but other data must be available if requested by the DWU. These same standards apply to the notices given to local officials. The information required in notices given to workers or their representatives differs slightly from the DWU notices. A table showing the information required in each notice is in appendix III.

[14]See appendix V for a listing of the lawsuits filed under WARN, including information on the litigants, the year and they were filed, and their outcome.

Limited incentive was also cited as a reason for so few lawsuits. Several local officials we interviewed stated that WARN provides no incentive for filing because a city that filed a suit would be viewed as "anti-business" and could be hampered in efforts to lure new business investment.

Uncertainty about the outcome was cited as another reason for few lawsuits. Attorneys involved with WARN lawsuits told us that the lack of information about the circumstances surrounding the event reduces the chances that an attorney will take the case because of the difficulty in determining it has merit.

Employers Unclear About WARN Provisions

Employers who filed WARN notices were unclear about provisions in the law or if the law applied to them. Some WARN provisions and Department of Labor regulations are difficult to understand. Efforts by Labor and the state dislocated worker units to further explain the provisions of WARN to employers and workers have eliminated some of the confusion. But, based on the results of our survey, employers are still confused.

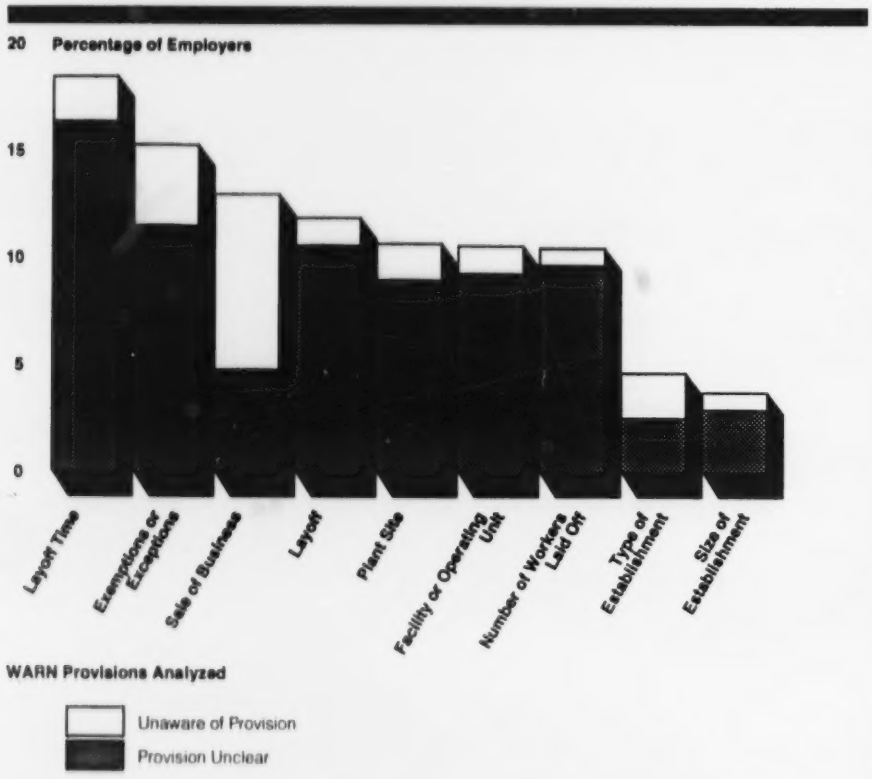
Employers Unclear About or Unaware of WARN Provisions

Our survey of employers who had filed WARN notices showed that about 32 percent of the employers were unclear about or unaware of at least one of the WARN provisions we reviewed.[15] State DWU and Labor officials stated that they received many inquiries about these WARN provisions.

Employers reported that they were most frequently unclear about or unaware of the provisions concerning the measurement of the layoff time periods or when the exemptions to filing WARN notices apply. For example, about 18 percent of the employers were unclear about or unaware of how to determine the time period of the layoff. Determining the time period is necessary to determine whether the number of workers suffering "employment loss" over a 30-day period would require the employer to provide a WARN notice. Figure 4.1 shows the extent to which employers were unclear about related WARN provisions.

[15]See page 43 for a description of the WARN provisions about which we asked employers to indicate their clarity.

Figure 4.1: Selected Provisions That Employers Filing WARN Notices Were Unclear About or Unaware of



Note: Employers could indicate that they were unclear about or unaware of more than one provision.

Unclear Implementing Regulations May Be Contributing to Employer Confusion

One reason for employer confusion may be the general language in the WARN provisions and the lack of clear implementing regulations. In an effort to clarify the provisions in WARN, Labor asked for and received numerous comments on the proposed regulations. However, in some instances, Labor's regulations may be contributing to employer confusion.

For example, WARN applies to closures and layoffs occurring at a "single site of employment." In an attempt to clarify this language, Labor regulations identified eight factors that must be considered in determining what constitutes a single site of employment. Despite Labor's efforts to clarify the law, confusion about the definitions may be contributing to

uncertainty about the definition of a plant site or of a facility or operating unit (see fig. 4.1).

Another provision in the implementing regulations for WARN that appears to create confusion for employers concerns how to decide whether the number of workers laid off is sufficient to trigger a WARN notice. When all workers are not terminated on the same day, determining the number of affected workers is difficult. In an attempt to clarify this situation, Labor's regulations introduce several criteria for determining how many workers were affected. First, employers must look ahead 30 days and behind 30 days to determine whether layoff actions in aggregate are sufficient to trigger a WARN notice. The regulations then instruct employers to look 90 days ahead and behind to determine whether separate layoff actions that are insufficient to trigger WARN will in the aggregate reach the minimum number of layoffs to trigger a WARN notice.

Despite Labor's efforts to clarify the law, many employers were still unclear about how to determine the number of workers laid off (see fig. 4.1). Labor officials recognized that some parts of the regulations could be confusing, but added that the courts would have to interpret and clarify ambiguous issues.

Efforts to Aid Implementation and Understanding of WARN

Shortly after WARN's passage, Labor and the state DWUs began programs to educate people about WARN. Labor prepared and widely distributed copies of A Guide to Advance Notice of Closings and Layoffs, which describes the provisions, coverage, and employer's responsibilities under WARN. They also offered to hold a briefing on WARN for any business, labor, or government group that requested help.

At the state level, DWUs developed a number of strategies for educating service providers, workers, employers, and elected officials about the requirements of WARN and how WARN and state DWUs should interact. These strategies included making slide presentations, writing articles, and holding seminars. Many states also sent letters to employers describing WARN coverage and their responsibilities under the law.

Labor and state DWUs also devoted much of their time to answering inquiries about WARN. A Labor official reported that they answered about 20,000 phone inquiries about WARN and the regulations since WARN was enacted in 1988. DWUs also responded to phone inquiries from employers and workers about actual layoffs or closures.

In addition, Labor held regional seminars on the benefits of rapid response and what was expected of agencies assisting workers affected by closures or layoffs. This nationwide effort was designed to re-educate agency officials and inform newly appointed state officials about the purpose of WARN and Labor's rules and expectations for state DWUs in responding to notices of closures and layoffs.

DWUs continue to focus on educating workers and employers about the services available from the state and the benefits of advance notice and early intervention. DWU officials we interviewed reported that they are trying to develop new ways to educate workers and employers about the requirements and purpose of WARN and rapid response. State efforts also include developing ways to coordinate information and services with other state agencies.

Despite Labor and state efforts, many employers are still confused about the provisions in WARN and Labor's implementing regulations.

Employers Cited Benefits for Workers, but Some Businesses Reported Negative Effects

Advance notice under WARN appears to have positive benefits for workers, but a negative impact on some employers. Employers reported that as a result of receiving a WARN notice, their workers were able to find new jobs sooner. Despite predictions that providing advance notice to workers would be costly, most employers surveyed reported the costs to prepare notices were under $500. However, some employers reported productivity decreases after giving advance notice.

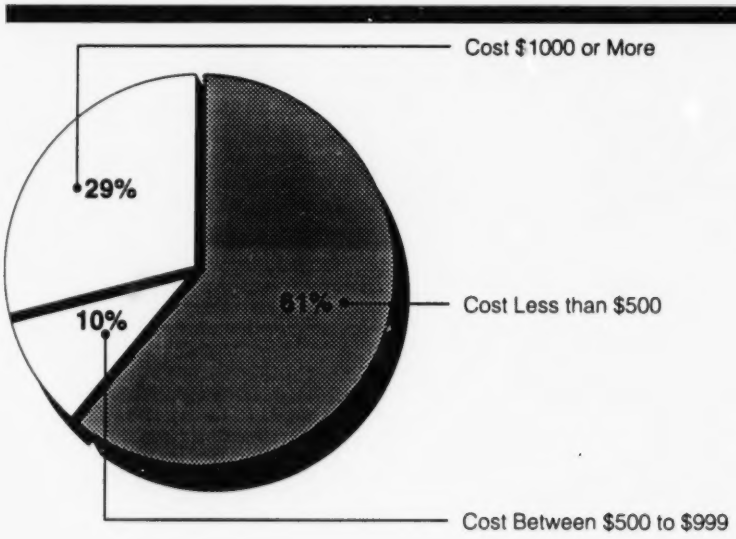
Of the 251 employers responding to our survey, 47 percent reported that they believe their workers found new jobs sooner as a result of getting notice. Some commented that their workers appreciated the notice because it gave them time to look for reemployment before the layoff or closure. Several dislocated workers, as well as workers' representatives, also told us that the earlier they knew of the closure or layoff, the sooner they could begin to accept their job loss and begin looking for new employment. They stated the advance notice prompted workers to seek help in coping with the reality of job loss sooner. Their observations confirm what researchers have shown—getting advance notice allows time for developing a plan of action before the job loss and the loss of benefits.[16]

The direct cost to employers of giving advance notice was less than expected by researchers and opponents of WARN. A 1988 study predicted that the administrative cost of giving WARN notice would average about $16,000 a year per employer.[17] As shown in figure 5.1, about 61 percent of the employers in our survey reported that for 1990 the cost associated with performing activities to provide advance notice for a layoff or closure was less than $500.

[16]GAO/HRD-87-105.

[17]The Private and Public Sector Costs of Proposed Mandatory Advance Notification Legislation, Robert R. Nathan and Associates, Inc., 1988.

Figure 5.1: Cost Associated With Giving WARN Notice

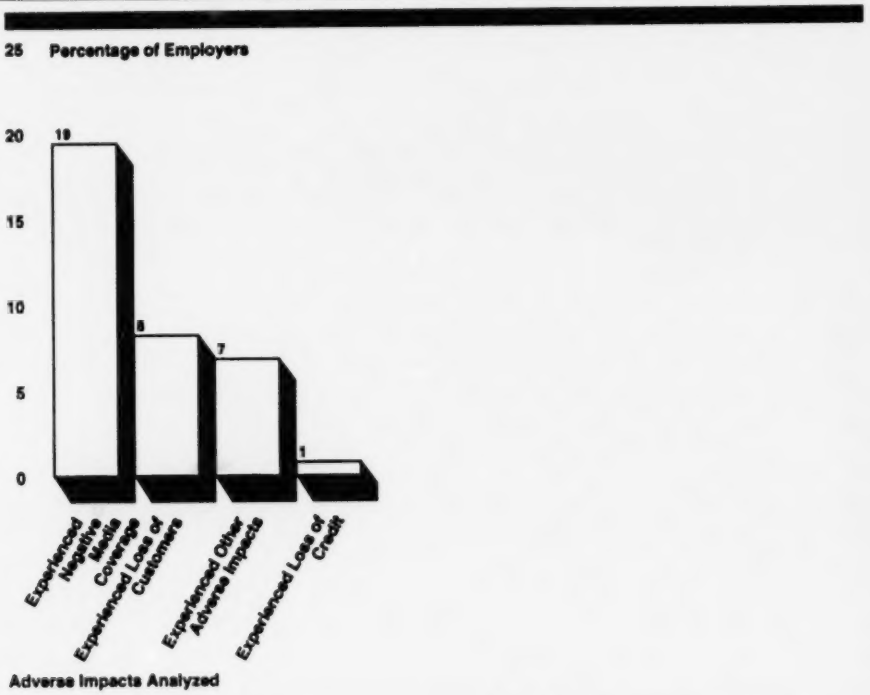


Specific costs associated with giving notice included attorney's fees, postage, and hiring additional staff to help prepare notices. Twenty-three employers reported developing a computer data base to use for notification decisions.

Most employers surveyed stated that notification to workers had no impact on their production. However, 29 percent of the employers surveyed said that after giving advance notice to their workers, productivity decreased. Some employers reported that the loss in productivity was due to lower worker motivation, increased use of paid leave, or the loss of management or nonmanagement workers before the closure or layoff.

The 1988 study also predicted that many employers would lose customers or credit or experience other negative impacts as a result of giving notice. However, our survey found that few employers reported such adverse impacts (see Fig. 5.2).

Figure 5.2: Adverse Impacts Reported by Employers From Giving WARN Notice



Note: Other adverse impacts include picketing, threats of destruction or sabotage, or product boycotts. None of the employers reported they had to file bankruptcy as a result of giving notice.

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Conclusions, Matters for Congressional Consideration, and Agency Comments

Early intervention is an important factor in the successful reemployment of many dislocated workers. Advance notice of pending closures and layoffs is key in providing time to plan and implement programs to help workers adjust to their dislocation and find reemployment. The success of this assistance is often related to how early help is given by state and local service providers. However, a 1987 GAO study found that few workers were given notice of a business closure or major layoff early enough to give them time to obtain assistance before or at the time of layoff. To help assure that employers give their workers, as well as state dislocated worker units and local officials, advance notice of closures and layoffs, the Congress enacted WARN.

Since the enactment of WARN, employers appear more likely to give their workers advance notice. Based on data from the 1987 GAO study, between 11 and 18 percent of the employers with closures or layoffs affecting large business establishments (250 or more employees) gave their workers at least 60 days' advance notice of the event. In 1990, we estimate that about 29 percent of the employers experiencing an event affecting 250 or more workers gave their workers 60 days' notice.

Employers, workers, state and local officials, and attorneys we interviewed offered several explanations for the limited influence of WARN. First, WARN exempted 41 percent of the layoffs we examined affecting 250 to 499 workers because the layoffs did not affect one-third of the employees at the work site.

Second, employer confusion may result in employers' not filing notices or filing them late. The Department of Labor is responsible for developing regulations to clarify the requirements in WARN. However, 32 percent of the employers who filed WARN notices were still unaware of or unclear about some of the law's provisions, such as the definition of layoff time, use of exceptions or exemptions, and how to calculate the number of workers laid off.

Third, workers, local officials and attorneys identified the lack of an effective enforcement process as one reason for the large number of apparent violations of WARN. Without an entity to enforce the provisions in WARN, the only remedy is the courts. However, the high cost of filing, limited incentives, and uncertain outcomes make pursuing the case in court difficult.

Matters for Congressional Consideration

Given the large number of closures and layoffs for which employers did not provide advance notice even when the event appeared to meet the WARN criteria, the Congress may wish to consider giving the Department of Labor the specific responsibility and authority for enforcing the law's provisions.

Agency Comments

The Department of Labor concurred with our conclusion that the enforcement provisions of WARN have not been adequate (see app. VII). However, Labor did not take a position on whether it should be given the responsibility and authority to enforce WARN.

Labor also described its efforts to publicize and explain the WARN legislation to workers and employers. This was done even though WARN places no requirement on Labor other than to promulgate regulations to implement WARN and provides no funding. Labor said it had responded to over 20,000 callers to date informing them of what is in the law and regulations.

Analysis of Mass Layoff Statistics Data

This appendix presents our scope and methodology for matching WARN notices with events identified by the Bureau of Labor Statistics' Mass Layoff Statistics Program. It includes information on

- use of the MLS and limitations to the data generated by the survey and
- development of the MLS and WARN listings.

Our analysis of 1990 events was based on data provided in the MLS and from WARN notices received by state DWUs. The type of information obtained by the MLS and the information required by the WARN provisions differ slightly.

The MLS uses reports of layoffs involving at least 50 workers and lasting more than 30 days. Information on mass layoffs is developed initially from each state's unemployment insurance data base, using a standardized, automated approach for identifying establishments that have at least 50 initial claims filed against them during a consecutive 3-week period (the "mass layoff").

The state agency then contacts these establishments by telephone to determine if a "permanent" layoff or plant closing has occurred. A permanent layoff is one that lasts more than 30 days. An establishment is considered closed if, at the time of contact, the employer plans to close, is closing, or has already closed the work site.

The telephone survey obtains specific information on the nature of the layoff, including the number of separations, the reason for and the duration of the layoff, and whether the establishment is remaining open.

The MLS tracks events with 50 or more initial claims in a 3-week period. WARN requires that notice be provided for events affecting at least 50 workers during a 30-day period. Although an event could have fewer than 50 claims during a 3-week period and not meet the MLS criteria, the same event during a 30-day period could affect at least 50 workers and require the employer to file a WARN notice.

In addition, the MLS does not generate sufficient data to allow us to determine whether an event meets the provisions of the law. For example, we could not determine whether an event exceeded 6 months because the state agency telephone survey, the only means of determining the duration of an event, is not included in the MLS. As a result, we focused most of our analysis on closures because their status can be more easily determined.

However, even for closures, we could only assess whether events in the analysis "appear" to meet the WARN criteria. Because the MLS does not generate sufficiently detailed information about all the circumstances involved in each event and the BLS confidentiality pledge to employers prevented us from contacting the employers directly, we could not conclusively determine whether every closure that appeared to meet the WARN criteria actually met each provision of the law.

BLS provided us with a list of 1,606 events on the MLS, but could not provide us with the names and addresses of the establishments due to their need to maintain the employers' confidentiality. BLS deleted events from the list if the reason for the layoffs was outside the scope of WARN. This included events due to seasonal layoffs, labor disputes, vacations, or completed contracts and layoffs that did not affect one-third of the work force or where the employment level was less than 100. Table I.1 shows events excluded from the MLS listing.

Table I.1: GAO Analysis of Events Based on the BLS Match of MLS Data and WARN Lists

GAO analysis	Layoff	Closure	Total
Events on MLS	1,412	194	**1,606**
Less seasonal events	476	3	**479**
Remaining events	936	191	**1,127**
Less exclusions			
Employment level not provided	227	19	**246**
Employment level less than 100	39	16	**55**
Ownership not private	20	0	**20**
Total exclusions	**286**	**35**	**321**
Events included in analysis	650	156	**806**
Less Exemptions			
Labor disputes, vacations, etc.	98	7	**105**
One-third Rule	317	[a]	**317**
Total exemptions	**415**	**7**	**422**
Appear to meet WARN criteria	235	149	**384**

[a]Not applicable.

Methodology for Selecting Notices for Review and Tests of Data Reliability

This appendix describes our scope and methodology for creating the WARN notice data base and the data base for surveying employers who gave a WARN notice for closures and layoffs in 1990. We created two data bases using a stratified random sample of WARN notices from a universe of 2,613 WARN events for 1990. They include (1) information in notices from employers about their timeliness and quality and (2) information in surveys of employers about the type of business and number of workers employed at the site, how well they understood selected WARN provisions, and the impacts associated with filing WARN. We obtained notice information from state DWUs by requesting copies of the original notices sent from employers.

Data Collection Procedures for WARN Notices

To measure the timeliness and quality of notices, we created a stratified random sample of 523 WARN notices from our original universe of 2,613 WARN events. However, after reviewing copies of the 523 notices provided by state DWUs, we eliminated 18 WARN events from the sample because they occurred in 1989 or 1991 and 29 events because they were not WARN events. In addition, 8 events were eliminated because DWUs could not locate the notice, and 71 were eliminated because they did not affect 50 or more workers. Employers are also not required to provide notice if the layoff affected fewer than 500 workers and less than one-third of the work force. However, we were not able to determine if one-third of the work force was laid off because notices did not include information about the number of workers at the work site. The final sample of 397 cases represents about 17 percent of the adjusted universe of 2,378 events that occurred in 1990.

Data Collection Procedures for Employers' Experiences With WARN

To collect information on employer experiences with WARN, we surveyed the employers who provided notices related to the 397 events identified from our random sample of notices on file with state DWUs. We received responses from employers for 251 (63 percent) of the events in our analysis. From the data collected, we were able to measure which WARN provisions were unclear to the employers and what the employers believe the impact of providing WARN notices was on them and their workers.

Information Required in WARN Notices

Information	DWUs and chief elected officials[a]	Worker Representative	Workers[b]
Name and address of employment site	X	X	
Name and phone number of company official to contact	X	X	X
Expected date of first separation	X	X[c]	X[c]
Number of affected workers	X		
Statement of type of layoff		X	X
Titles of positions to be affected and names of the workers currently holding these jobs		X	
Existence of bumping rights			X

[a]The following information is not required to be included in the notices to DWUs and local officials, but must be made available upon request by the DWU or elected officials: (1) job titles of positions to be affected, (2) statement of type of layoff, (3) existences of bumping rights, (4) name of union representative, and (5) name and address of chief elected officer of each union.

[b]If no representative.

[c]Must also include schedule of separations.

GAO Survey of Employers

APPENDIX IV

GAO SURVEY OF EMPLOYERS

U.S. General Accounting Office

Survey on Employers' Experiences with the Worker Adjustment and Retraining Notification (WARN) Act

The United States General Accounting Office (GAO) is studying the implementation of the Worker Adjustment and Retraining Notification (WARN) Act. As part of this study, we are conducting a survey of employers who were expecting a mass layoff, including those due to closings, in calendar year 1990.

We are interested in learning about the layoff site's experiences subsequent to announcing a layoff and to sending a WARN notice to your state's dislocated worker unit. Also, this survey provides an opportunity to give feedback to us about the advantages and disadvantages of the WARN requirement.

Your organization was randomly selected from a list of employers in your state who provided a WARN notice. We ask that you complete and return this questionnaire to us in the next two weeks. We will keep your responses strictly confidential. No one outside of GAO will see how you individually responded.

You may return the questionnaire in the enclosed pre-addressed business reply envelope. Alternatively, you may fax your completed questionnaire to us on (313) 256-8015.

If you have any questions or comments about this survey, please feel free to call Louis Ockunzzi on (313) 256-8000. In the event that the business reply envelope is misplaced, you may return the questionnaire to:

U.S. General Accounting Office
Attn: Mr. Louis Ockunzzi
477 Michigan Avenue, Suite 865
Detroit, Michigan 48226

1. The label below contains information from the WARN notice that you sent to your state dislocated worker unit, including the date of the notice. All of the following questions refer to the specific layoff cited on this WARN notice. Please check if the name and location of the site and the information on the type of layoff is accurate. Enter any corrections you might have in the appropriate spaces beneath the label. Also, enter the **actual** date of the layoff, if different from the date on the label.

Name of Site:

_____

City and State:

_____

Mass Layoff or Closing:

_____

Actual Date of Layoff: __/___/1990 or
Mo. Day

[ ] Layoff did not occur

Note: To show the basis of our analysis responses from the survey of employers who gave notice, we have included the survey instrument. We have also included the frequencies for all valid responses for each question in brackets or parenthesis. For questions involving values, such as question 8, the number shown is the median value.

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2. Please enter the layoff site's standard industrial code.

   Standard Industrial Code (SIC): (251)

3. Which of the following types of institutions best describes your organization? (CHECK ONE.)

   1. [105] Privately held corporation
   2. [126] Publicly held corporation
   3. [2] Private non-profit corporation
   4. [2] Private not for profit corporation
   5. [0] Quasi-public corporation
   6. [0] Public college or university (SKIP TO QUESTION 7.)
   7. [16] Other (PLEASE SPECIFY.)

   _____

4. Is the site a unit, division or subsidiary of another company? (CHECK ONE.)

   1. [162] Yes
   2. [89] No (SKIP TO QUESTION 7.)

5. Please enter the name and address of this company.

   Name of the company:

   _____

   Address of the company:

   _____

   _____

6. Including the layoff site and all other units, divisions or subsidiaries, does the company referred to in Question 5 employ 100 or more people?

   1. [157] Yes
   2. [2] No

7. On what date did the site give WARN notice to the employees for the layoff referred to on the label in Question 1?

   ____/____/____
   Mo. Day Yr.
   (247)

8. According to the WARN legislation, a part-time employee is a person who was working less than 20 hours a week at the time a WARN notice was given, or a person who was working at a site less than six months of the year preceding the date of the WARN notice. All other employees are considered full-time. Please use these definitions when answering the questions below about full and part-time employees.

   On the date the WARN notice was sent to your state dislocated worker unit, about how many people were employed full-time, and about how many people were employed part-time at the site? (ENTER NUMBER.)

   122(median) full-time employees
   (246)
   0(median) part-time employees
   (241)

9. Did the site experience the layoff, or any portion of the layoff, referred to in Question 1? (CHECK ONE.)

   1. [229] Yes (SKIP TO QUESTION 11.)
   2. [21] No

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10. What happened to prevent the expected layoff? (CHECK ONE.)

    1. [5] The site was sold and the employees were retained by the new owners
    2. [1] Government intervention or assistance (e.g., tax abatements, rezoning, etc.)
    3. [4] Expected business downturn did not occur
    4. [0] Employees made wage or benefit concessions
    5. [11] Other (PLEASE SPECIFY.)

    _____

    _____

(IF THE SITE DIDN'T EXPERIENCE A LAYOFF, SKIP TO QUESTION 15.)

11. About how many full-time, and about how many part-time employees lost employment as a result of this layoff? (ENTER NUMBER.)

    82(median) full-time employees
    (225)
    0(median) part-time employees
    (218)

12. Since the layoff, did the site rehire any of these employees?

    1. [65] Yes
    2. [160] No (SKIP TO QUESTION 15.)

13. About how many full-time, and about how many part-time employees did the site rehire? (ENTER NUMBER.)

    26(median) full-time employees
    (64)
    0(median) part-time employees
    (58)

14. On what date did the site begin to rehire these employees? (ENTER DATE.)

    ___/___/___
    Mo. Day Yr.
    (60)

15. Did state or local government officials take any actions to avert this layoff? (CHECK ONE.)

    1. [3] Yes, only state officials
    2. [2] Yes, only local officials
    3. [8] Yes, both state and local officials
    4. [231] No (SKIP TO QUESTION 17.)

16. Which of the following actions did state or local government officials take to avoid this layoff? (CHECK ONE FOR EACH.)

	Yes	No
1. Provided state funds?	[1]	[5]
2. Provided local funds?	[0]	[6]
3. Local government offered tax abatements?	[2]	[5]
4. State government offered tax abatements?	[1]	[5]
5. Local government offered new facilities?	[0]	[6]
6. State government offered new facilities?	[0]	[6]
7. Other? (PLEASE SPECIFY.)	[9]	[3]

_____

17. Did any employees file law suits against your organization for providing insufficient or no notice of this layoff? (CHECK ONE.)

    1. [1] Yes

    2. [249] No (SKIP TO QUESTION 20.)

18. Were any of these suits resolved?

    1. [0] Yes

    2. [1] No (SKIP TO QUESTION 20.)

19. Were any of these suits resolved in each of the following ways? (CHECK ONE.)

	Yes (1)	No (2)
1. Settlement outside of court	[0]	[0]
2. Court ruling	[0]	[0]
3. Suit was withdrawn without settlement	[0]	[0]
4. Other (PLEASE SPECIFY.)	[0]	[0]

_____

_____

20. Was the site required by the WARN act to send notification to your state's dislocated worker unit?

    1. [218] Yes

    2. [24] No

21. Please indicate if you ever received information about the WARN act from each source listed below. (CHECK ONE FOR EACH.)

	No	Yes
	(1)	(2)
1. Trade groups	180	67
2. Unions	239	8
3. Attorney(s)	62	185
4. State or local government agency at your request	168	78
5. State government agency through general mailing	165	79
6. Federal government agency	173	72
7. Other (PLEASE SPECIFY.) _____	202	43
_____	12	7

22. Listed below are a number of provisions that determine if a site is required to send WARN notice to the state's dislocated worker unit. Please indicate how clear or unclear you found each of these provisions.

	Very clear	Clear	About as clear as unclear	Unclear	Very unclear	Not aware of require-ments
	(1)	(2)	(3)	(4)	(5)	(6)
1. Definition of size of establishment	80	137	14	4	3	2
2. Definition of type of establishment	71	135	21	5	1	5
3. Definition of number of employees laid off	58	120	37	18	5	2
4. Definition of plant site	52	133	27	14	7	4
5. Definition of exemptions	34	109	57	25	2	9
6. Definition of the time it takes for the full layoff to occur	35	95	65	28	11	5
7. Definition of permanent or mass layoff	44	133	34	15	10	3
8. Definition of facility or operating unit	45	127	42	13	9	3
9. Definition of sale of business	35	128	40	6	5	19
10. Other (PLEASE SPECIFY.) _____	0	1	1	2	7	0
_____	0	0	0	0	3	0
_____	0	0	0	0	2	0

23. In PART A, please indicate if you ever requested clarification about the requirements of the WARN act from each source listed below. If "Yes", in PART B, please tell us if you obtained the clarification you requested from this source.

	PART A Did you request clarification from this source? (CHECK ONE FOR EACH.)		PART B Did you obtain the clarification you requested from this source? (CHECK ONE FOR EACH "YES" IN PART A.)	
	No	Yes —>	No	Yes
	(1)	(2)	(1)	(2)
1. Trade groups	227	15	2	12
2. Unions	241	1	1	0
3. Attorney(s)	66	176	8	168
4. State or local government agency	194	47	6	41
5. Federal government agency	230	12	6	6
6. Other (PLEASE SPECIFY.) _____	219	18	2	16
_____	11	0	0	0

24. Listed below are some activities that sites may perform to provide WARN notification. In PART A, please indicate if the site performed each of these activities to provide WARN notification for the expected layoff. If "Yes", in PART B, please tell us if the site incurred any costs for performing this activity. If "Yes", then in PART C, please estimate these costs.

	PART A Was activity performed? (CHECK ONE FOR EACH.)		PART B Were there any costs? (CHECK ONE FOR EACH "YES" IN PART A.)		PART C What was the cost? (ENTER AMOUNT.)
	No	Yes —>	No	Yes —>	
	(1)	(2)	(1)	(2)	
1. Preparing the WARN notice	42	201	84	114	$ 750(median) (95)
2. Developing a computer data base to use for notification decisions	182	58	27	30	$ 500(median) (20)
3. Hiring additional staff to assist in the WARN notification effort	230	10	4	6	$ 2,500(median) (5)
4. Other (PLEASE SPECIFY.) _____	207	29	0	28	$ 2,000(median) (22)
_____	9	4	0	3	$ 400(median) (1)
_____	10	0	0	0	$ 0(median) (0)

25. From the day the site gave the employees WARN notice to the day of the expected layoff, did the site lose bank credit? (CHECK ONE.)

    1. [4] Yes

    2. [240] No (SKIP TO QUESTION 29.)

26. If the site had not given WARN notice, would this loss of credit have occurred during this period? (CHECK ONE.)

    1. [2] Definitely yes

    2. [1] Probably yes

    3. [0] Probably no

    4. [1] Definitely no

27. About how much credit did the site lose during this period? (ENTER AMOUNT.)

    $1,000,000(median)
    (1)

28. Of the site's total credit line as of the day WARN notice was given to the employees, about what percentage did this loss represent? (ENTER THE PERCENTAGE.)

    75(median)%
    (2)

29. From the day the site gave the employees WARN notice to the day of the expected layoff, did the site file for bankruptcy? (CHECK ONE.)

    1. [10] Yes

    2. [238] No (SKIP TO QUESTION 31.)

30. If the site had not given WARN notice, would this bankruptcy have occurred during this period? (CHECK ONE.)

    1. [10] Yes

    2. [0] No

31. From the day the site gave the employees WARN notice to the day of the expected layoff, did any managers, who were not scheduled to be laid off, quit? (CHECK ONE.)

    1. [47] Yes

    2. [200] No (SKIP TO QUESTION 34.)

32. About how many of these managers quit? (ENTER NUMBER.)

    2(median) managers
    (44)

33. If the site had not given WARN notice, about how many of these managers would not have quit during this period? (ENTER NUMBER.)

    2(median) managers
    (41)

34. From the day the site gave the employees WARN notice to the day of the expected layoff, did any non-management employees, who were not scheduled to be laid off, quit? (CHECK ONE.)

    1. [95] Yes

    2. [149] No (SKIP TO QUESTION 37.)

35. About how many of these non-management employees quit? (ENTER NUMBER.)

    10(median) non-management employees
    (87)

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36. If the site had not given WARN notice, about how many of these non-management employees would **not** have quit during this period? (ENTER NUMBER.)

    5(median) non-management employees
    (76)

37. From the day the site gave the employees WARN notice to the day of the expected layoff, did the site lose any customers or experience a reduction in orders? (CHECK ONE.)

    1. [38] Yes

    2. [205] No (SKIP TO QUESTION 41.)

38. If the site had not given WARN notice, about how many of these losses or reductions would have occurred during this period? (CHECK ONE.)

    1. [10] Few or none

    2. [10] Some

    3. [0] About half

    4. [5] Most

    5. [10] All or almost all

39. In the space below, please list the names of the three customers representing the site's largest revenue losses in sales or orders during this period. Then, enter the amount of revenue the site lost from each customer.

Name of Customer	Lost Revenue (median)
(11) _____	$110,000
(6) _____	$ 63,781
(6) _____	$ 69,126

40. Of the site's total projected revenues from sales or orders for this period, about what percentage do these losses represent? (ENTER THE PERCENT.)

    20(median)%
    (21)

41. From the day the site gave the employees WARN notice to the day of the expected layoff, did your organization experience each of the following events? (CHECK ONE FOR EACH.)

	Yes (1)	No (2)
1. Picketing	[8]	[240]
2. Threats of destruction or sabotage by non-employees	[5]	[243]
3. Product boycotts	[6]	[243]
4. Other (PLEASE SPECIFY.)	[12]	[236]

_____

(IF YOU ANSWERED "NO" TO ALL THE EVENTS IN QUESTION 41, SKIP TO QUESTION 43.)

42. If the site had not given WARN notice, about how many of these events would have occurred during this period? (CHECK ONE.)

    1. [14] Few or none

    2. [3] Some

    3. [0] About half

    4. [1] Most

    5. [5] All or almost all

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43. From the day the site gave the employees WARN notice to the day of the expected layoff, did any employees attempt to destroy or sabotage your organization's equipment or operations? (CHECK ONE.)

    1. [22] Yes

    2. [227] No (SKIP TO QUESTION 46.)

44. If the site had not given WARN notice, would these attempts have been made during this period? (CHECK ONE.)

    1. [4] Yes

    2. [17] No

45. Please describe these attempts in the space below.
    (19)

    _____

    _____

    _____

    _____

    _____

    _____

    _____

    _____

46. From the day the site gave the employees WARN notice to the day of the expected layoff, how much did the site's overall productivity increase or decrease, if at all? (CHECK ONE.)

    1. [1] Increased greatly

    2. [11] Increased somewhat

    3. [138] Neither increased, nor decreased (SKIP TO QUESTION 49.)

    4. [54] Decreased somewhat

    5. [36] Decreased greatly

47. If the site had not given WARN notice, would this increase or decrease have occurred during this period? (CHECK ONE.)

    1. [24] Yes

    2. [78] No

48. In the space below, please describe in what ways productivity increased or decreased at the site.
    (86)

    _____

    _____

    _____

    _____

    _____

    _____

49. Did the site receive any positive or negative media coverage as a result of providing WARN notice?

    1. [13] Yes, positive coverage only
    2. [48] Yes, negative coverage only
    3. [44] Yes, both kinds of coverage
    4. [143] No

50. Did any employees that were scheduled to be laid off at the site begin new jobs sooner because the site gave WARN notice?

    1. [108] Yes
    2. [124] No

51. In the space below, please describe any other positive benefits the site experienced, if any, as a result of giving WARN notice. (97)

    _____
    _____
    _____
    _____
    _____
    _____

52. On the day the site gave the employees WARN notice, did the site have a collective bargaining agreement with a union that required that workers be notified of a pending layoff? (CHECK ONE.)

    1. [74] Yes
    2. [175] No (SKIP TO QUESTION 54.)

53. How many days notice were required by this agreement? (ENTER NUMBER.)

    3(median) days (69)

54. Does your state or local government have laws or regulations, in addition to WARN, that require employers to give advanced notice of mass layoffs? (CHECK ONE.)

    1. [48] Yes
    2. [183] No

55. Please enter the name, title, and telephone number of the person in your organization we should contact for further details on the information recorded in this questionnaire.

    Name:

    _____

    Title:

    _____

    Telephone:

    (_____)_____-_____

56. If you have any other comments about the WARN act, or any other issues raised in this questionnaire, please write them below or on the back of the page. (115)

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Court Cases Filed Under WARN

	Litigants	State where filed (year)	Outcome
1	Crane v. Chugach Alaska Corporation	Alaska (1992)	The court ruled that 50 workers were affected but that the events surrounding the layoffs were separate and distinct and unrelated to the plant closing. In addition, the court ruled that the "faltering business" exemption applied and that the employer acted in "good faith." The case is on appeal.
2	Capitol Castings Incorporated v. Arizona Department of Economic Security	Arizona (1992)	The Arizona circuit court of appeals agreed with an Arizona Unemployment Insurance Appeals Board that the unemployment compensation payments received from the state may not be used to offset the back pay remedy of WARN. Accordingly, it ruled payments were not wages and the workers were unemployed.
3	Joshlin v. Gannett River States Publishing Corporation	Arkansas (1992)	Pending.
4	Shelby v. Arkansas Gazette	Arkansas (1991)	The court said WARN benefits can be considered severance pay. The case is on appeal.
5	Laboratory Film, Video Technicians, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (Local 683) v. Metrocolor Laboratories	California (1990)	The court ruled that partners may be liable under WARN even if, shortly after the partnership is dissolved, a closure occurs and the other partner takes no part in the decision to close.
6	Robbins v. Good Stuff Food Company	California (1991)	Pending.
7	Cann v. Seagate Technology, Incorporated	California (1991)	Pending.
8	Headrick v. Rockwell International Corporation	Colorado (1992)	Pending.
9	Gifford v. Ebenstein & Ebenstein, P.C.	Connecticut (1991)	Pending.
10	Office and Professional Employees International Union (Local 2) v. Federal Deposit Insurance Corporation	District of Columbia (1991)	The court dismissed part of the complaint, ruling that WARN does not apply to closures resulting from government intervention.
11	Gonzalez v. Kaplan Industries	Florida	Pending.
12	IN RE Lifschultz Fast Freight Corporation, d/b/a Lifschultz Corporation	Illinois (1991)	Pending
13	Dock Ward v. Moline Corporation	Illinois (1992)	Pending
14	United Paper Workers (Local 903) v. Lennon Wallpaper Company	Illinois (1992)	The court ruled that information regarding the reasons for closing a plant is related to determining whether a WARN exception applies. Plaintiff was therefore entitled to discovery regarding reasons for the closing.
15	Gallo v. Arthur Winer, Incorporated	Indiana (1992)	Pending.

(continued)

	Litigants	State where filed (year)	Outcome
16	Oil, Chemical and Atomic Workers International Union (Local 7-515) v. American Home Products Corporation and Whitehall Laboratories, Incorporated, d/b/a Whitehall-Robbins	Indiana (1991)	The court ruled that layoffs in February and July were not part of the plant closure but that layoffs in November of the same year were. This latter group of employees were not entitled to damages because they were recalled and suffered no employment loss. The court ruled further that proof of planning and consideration of a plant closing does not support a reasonable inference that all layoffs were part of the closing plan. The court also ruled that the notice given in November was insufficient because it did not specify expected separation dates. However, the court also ruled that the defendant's violation was in "good faith" and the defendant had reasonable grounds to believe its conduct was not a violation of WARN. Therefore, no damages were awarded. The case eventually settled out of court.
17	In Re: Cargo, Incorporated	Iowa (1992)	The court found that the WARN wages were similar to severance pay and therefore entitled to priority status in the bankruptcy case.
18	Damron v. Rob Fork Mining Corporation	Kentucky (1990)	The court held that workers laid off for as long as 10 years may have a hope, but have no reasonable expectation, of returning to work in the near and foreseeable future. Accordingly, such workers may not be included in determining whether a closure affects 100 or more workers.
19	Carpenters District Council of New Orleans and Vicinity v. Dillards Department Stores, Incorporated	Louisiana (1989)	The court ruled that employers may give reduced notice under the faltering business exemption only if they experience circumstances that "by their very nature necessitate or impel" a plant closure. The court ruled that workers are entitled to wages for 60 individual days not the number of work days within a 60-day period. In addition, the court ruled that the employer cannot offset the liability by counting severance benefits and vacation pay because they were not voluntary payments, i.e. each was required by law to be paid to workers. The court ruled that the WARN Act is constitutional, that WARN's liability provisions are not unconstitutionally vague, and that notification regulations do not constitute unconstitutionally taking and do not violate employers' due process rights. Further, the court ruled that part-time employees are affected employees who are entitled to notice of a mass layoff or plant closing and that prejudgment interest is appropriate in a WARN case. Finally, the court ruled that individual corporate officers and directors are not considered "employers" under WARN and cannot be held liable for damages.
20	IN RE Brintec	Massachusetts	Pending.

(continued)

	Litigants	State where filed (year)	Outcome
21	United Electrical Radio and Machine Workers of America (Local 291) v. Maxim, Incorporated	Massachusetts (1990)	The court ruled that WARN applies to employers with 100 workers measured at the time notice is first required to be given, i.e., 60 days prior to a plant closure, not at the time the plant closes. The court also ruled that individual layoffs/closures over a 90-day period are to be added together for purposes of determining whether a layoff/closure covers the requisite number of workers only if each layoff/closure affects less than the requisite number necessary (50) to trigger the act. The court further ruled that notice was probably defective for the one layoff covering more than 50 workers because it was not as specific as required and was sent only to the local and not the international workers union. Accordingly, the court ordered the attachment of defendant's property.
22	IN RE Mt. Pleasant Hospital	Massachusetts	Pending.
23	IN RE Temple Stuart	Massachusetts	Pending.
24	Service Employees' International Union (Local 79) v. Botsford Health Services Corporation d/b/a Northwest General Hospital	Michigan (1991)	The defendants argued that they were not liable under state law. The court refused to dismiss the claim, and the case was settled out of court.
25	International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (Local 600) v. Botsford Health Services Corporation d/b/a Northwest General Hospital	Michigan (1991)	The defendants argued that they were not liable under state law. The court refused to dismiss the claim, and the case was settled out of court.
26	Graphic Communications (Local 2-c) v. Bland Printing Company	Michigan (1990)	Case settled out of court after initial filing.
27	International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America v. Hoover Group, Incorporated	Michigan (1989)	Case settled out of court after initial filing.
28	Kildea v. Electro Wire Products, Incorporated	Michigan (1990)	The court ruled that workers on layoff prior to the notice should have also been given notice. This was based on the premise that the workers had a reasonable expectation of recall. This same premise would also apply to workers laid off for more than 6 months provided there was still a reasonable expectation of recall at the time of the closing.
29	Wallace v. Detroit Coke Corporation	Michigan (1992)	Pending.
30	United Steelworkers of America (Local 29) v. Detroit Coke Corporation	Michigan (1992)	Pending.

(continued)

	Litigants	State where filed (year)	Outcome
31	Solberg v. Inline Corporation	Minnesota (1990)	The court ruled that workers allegedly hired as permanent workers are considered part-time workers under WARN if, at the time notice is required, they worked fewer than 6 of the 12 preceding months. Because the definition of a mass layoff or plant closure excludes part- time workers, those employed for less than 6 months are not to be counted in determining whether a mass layoff or plant closure occurred. Defendant's attorney's fees were not awarded. The court ruled that the case was not frivolous and the plaintiff's case was well- taken and fairly urged. For guidance, court referred to construction of civil rights statutory provisions.
32	International Association of Machinists and Aerospace Workers v. General Dynamics	Missouri	Pending.
33	International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, (Local 397) v. Midwest Fasteners, Incorporated	New Jersey (1990)	The court ruled that WARN does not prohibit the issuance of a preliminary injunction. However, the court declined to issue one in this case even though it noted that the company could not sustain its burden of showing that less than 60 days' notice was required because of WARN's faltering business exception. The court did not issue the preliminary injunction because the union could not show that there would be irreparable harm without it (e.g., by fraudulent fund transfers) and the possibility of harm to others and the public weighed against such issuance. Despite observance of corporate formalities, parent companies are liable under WARN for failure of subsidiaries to give 60 days' notice of plant closing where there are common owners and officers, parent controls subsidiary and makes critical policy decisions including decision to close.
34	Ayick v. Boris Kroll, Fabrics, Incorporated	New Jersey (1991)	Pending.
35	Hotel Employees Restaurant Employees International Union (Local 54) v. Elsinore Shore Associates	New Jersey (1989)	The court ruled that the conservator appointed to allow the casino to continue operations without a license until sale of the casino could be completed was not an "employer" under WARN and, therefore, had no obligation to notify workers 60 days prior to the closure. The court subsequently ruled that most government- ordered shutdowns are not exempt from the act, but should be treated under the unforeseeable business circumstances exception, which allows employers to give reduced notice. The court also ruled that WARN regulations have the force of the law.

(continued)

	Litigants	State where filed (year)	Outcome
36	Finkler v. Elsinore Shore Associates	New Jersey (1989)	The court ruled that the conservator appointed to allow the casino to continue operations without a license until sale of the casino could be completed was not an "employer" under WARN, and therefore, had no obligation to notify workers 60 days prior to the closure. The court subsequently ruled that most government ordered shutdowns are not exempt from the Act, but should be treated under the unforeseeable business circumstances exception which allow employers to give reduced notice. The court also ruled that WARN regulations have the force of the law.
37	Amalgamated Clothing and Textile Workers Union (Local 169) v. TFM Industries, Incorporated	New Jersey (1989)	Pending.
38	Hotel Employees Restaurant Employees International Union (Local 54) v. W-L Inn Associates	New Jersey (1992)	Pending.
39	Farber v. Emergency Response People, Incorporated	New Jersey (1992)	Pending.
40	Cruz v. Robert Abbey, Incorporated	New York (1990)	The court ruled that sufficient questions of fact existed regarding compliance with WARN and refused to dismiss the case. In addition, the court ruled that neither the union contract nor WARN requires the union to take responsibility for notification or monitoring and that class actions are proper in WARN cases. The court also ruled that under WARN an employer must be a corporate entity; therefore individuals may not be held liable.
41	Waks and Bermudez v. New York Guardian Mortgagee Corporation	New York (1990)	The court consolidated the Employees Retirement and Income Security Act and WARN cases, and they will be part of the judgment under receivership.
42	PICO Korea Labor Union v. PICO Products Incorporated	New York (1990)	The court ruled that WARN does not apply to U.S. companies located in foreign countries.
43	Finnan v. L. F. Rothschild & Company, Incorporated	New York (1989)	The court ruled that employers are required to provide 60 days' notice to workers before they are terminated, even though terminations occur less than 60 days after the effective date of the act. The court also ruled that punitive damages are not available under WARN.

(continued)

	Litigants	State where filed (year)	Outcome
44	Office and Professional Employees International Union v. Sea-Land Service, Incorporated	New York (1991)	The court ruled that since WARN defines "employment loss" as a layoff exceeding 6 months, a layoff and recall within 30 days is not an "employment loss." Only a second layoff, if it exceeds 6 months, may count toward meeting the statutory threshold of 50 workers. This did not occur in this case even though employment losses over a 90-day period may be aggregated where each is less than the threshold amount of 50. The number of workers who suffered an employment loss within any 90- day period never exceeded 48, therefore, no "plant closing" occurred under WARN, and plaintiffs are not entitled to damages.
45	Auerbach v. Consumer News and Business Channel Partnership (CNBC), Incorporated, the National Broadcasting Company, and Financial News Network (FNN) Incorporated	New York (1992)	The court ruled that a new owner can be liable under WARN and has refused to discuss the claim. The case is pending in bankruptcy court.
46	Holcomb v. Pilot Freight Carriers, Incorporated	North Carolina (1990)	The bankruptcy court has jurisdiction, and the case was so transferred.
47	Robinson v. Glastron Boat Manufacturing Company	North Carolina (1991)	The court ruled that the company gave notice to the state, but not the workers. In December 1991, the company settled the class action suit.
48	Barber v. New Delphos Manufacturing Company	Ohio (1991)	Pending.
49	United Automobile, Aerospace, and Agricultural Implement Workers of America (Local 1077) v. Shadyside Stamping Corporation	Ohio (1989)	The court dismissed the claim, ruling that the employer substantially complied in good faith. Court denied plaintiffs' attorney's fees because plaintiff was not a prevailing party.
50	Salyer v. Universal Concrete Products	Ohio (1990)	The appeals court affirmed a lower court ruling that two buildings in question, although contiguous, had separate management, produced different products, and had separate work forces. These sites were therefore separate sites of employment and notice was not required.
51	Litherland v. Tredegar Industries, Incorporated	Ohio (1992)	The court ruled that although the workers were not given notice, they were rehired by the new owner and thus did not suffer employment loss.
52	Oil Chemical and Atomic Workers International Union v. RMI Titanium metals Reduction and Sodium Plants	Ohio (1992)	Pending.
53	Shopmen's (Local 620), International Association Bridge, Structural and Ornamental Ironworkers v. Lee C. Moore Corporation	Oklahoma (1990)	The court dismissed the claim on the basis that none of the layoffs affected 50 workers and that each was a sperate incident related to the completion of a separate construction project.
54	In Re: Bald Knob Land & Timber Company	Oregon (1991)	Pending.
55	Moore v. The Warehouse Club, Incorporated	Pennsylvania (1990)	The court decided that the closure affected 47 employees and that WARN did not apply.

(continued)

	Litigants	State where filed (year)	Outcome
56	Tomko v. Emery Worldwide Delivery	Pennsylvania (1991)	The court certified the class after appeal. The court also ruled that discovery of employer's intent to evade WARN is irrelevant unless the alleged intent to evade by the defendants falls squarely within the statutory language of the act. The case is pending.
57	United Steelworkers of America v. Star Building Systems Division and Robertson-Ceco Corporation	Pennsylvania (1991)	Pending.
58	United Steelworkers of America v. North Star Steel	Pennsylvania (1991)	The court rejected the defendants' claim of good faith. The union was granted summary judgement on liability and was required to submit a report in 60 days regarding parties' progress on stipulation of damages.
59	Parsley v. Kunja Knitting Mills	South Carolina (1991)	The court allowed the plaintiff to attempt to "pierce the corporate veil" in order to prove liability of parent corporations.

(continued)

	Litigants	State where filed (year)	Outcome
60	Jones v. Kayser-Roth Hosiery, Incorporated	Tennessee (1990)	The court ruled that 1) Workers temporarily laid off who have reasonable expectation of being recalled are considered "workers" under WARN and are entitled to notice of a plant closure and damages. 2) A mass layoff of workers who are subsequently recalled to work within six months does not constitute an "employment loss" under WARN. 3) Under WARN's "unforeseen business circumstances" exception, notice need not be given at least 60 days prior to a plant closure or mass layoff if the business circumstances are not reasonably foreseeable, but must be given to affected workers as soon as is practicable. The court ruled that 30 days was too long in this case. 4) Plaintiffs entitled to damages under WARN may recover the value of any benefits they would have received during the violation period (e.g., premiums paid) and any expenses incurred during the violation period that would have been recovered. This includes the value of medical benefits provided by an employer that is self-insured. Value of insurance may be recovered even where plaintiff suffers no medical expenses during violation period. 5) In determining whether a defendant's actions were in "good faith," thereby justifying a reduction in damages in accordance with WARN, the relevant inquiry is examination of defendant's actions prior to the time it gave notice (i.e., notice of the plant closure or mass layoff and not notice of an individual worker's termination). Employees on temporary layoff at the time of plant shutdown are "affected employees" entitled to notices and damages. 6) Damages are to be calculated in terms of calendar days, and not fractions of days or hours, and are not to include the date on which notice of the plant closure was actually given.
61	Burnett v. Durham Knitting Company	Tennessee (1991)	Settled.
62	Allied Industrial Workers of America (Local 300) v. ARA Automotive Group	Texas (1991)	Pending.
63	Flores v. Caldwell-Hamby, Incorporated, and Crustbusters, Incorporated	Texas (1990)	Pending.
64	Grupo Fuerza Y Justicia v. Jerrell Company	Texas (1991)	Pending.
65	United Mine Workers v. Harman Mining Corporation	Virginia (1991)	The court ruled that 14 workers whose positions were eliminated did not suffer employment loss when they exercised their "bumping" rights.
66	Seattle West Medical Center	Washington	Pending.

(Table notes on next page)

Note: The information on WARN related cases was provided by the Maurice and Jane Sugar Law Center for Economic and Social Justice. The details were verified only to the extent we were able to assess original source material.

States Contacted or Visited by GAO During Our Review

States Contacted

Alabama
Florida
Illinois
Indiana
Kentucky
Minnesota
New Jersey
New York
Pennsylvania
Washington
Wisconsin

States Visited

California	Job Training Partnership Division Sacramento Employment and Training Agency City of Sacramento County of Sacramento City of San Francisco Private Industry Council of San Francisco
Massachusetts	Industrial Services Program Northeast Rapid Response Team (City of Lowell) Brockton Area Private Industry Council
Michigan	Governor's Office for Job Training, Rapid Response City of Hamtramck City of Grand Rapids Grand Rapids Area Employment Training Council Wayne County Private Industry Corporation
Ohio	Ohio Bureau of Employment Services, Rapid Response Unit Cuyahoga County Office of Employment and Training United Labor Agency

Texas	Department of Commerce, Work Force Development Division Austin, Travis County Private Industry Council City of Austin Alamo Private Industry Council City of San Antonio

Comments From the Department of Labor

U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210

FEB 18 1993

Ms. Linda G. Morra
Director, Education
and Employment Issues
Human Resources Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Morra:

The Department appreciates the opportunity to comment on the WARN Report. We have the following observations.

First, we appreciate the comments regarding the Department's implementation of the Act. Despite the very limited requirement to develop and issue regulations, the Department made extensive efforts to involve both management and workers in the regulations development, in particular with respect to the identification of major issues and concerns. This involvement, we believe, not only assisted in the development of the regulations, but resulted in a broad based awareness and understanding by management and labor of the existence and requirements of WARN.

The Department also undertook extensive efforts to publicize and explain the WARN legislation and subsequent regulations. This included numerous presentations before groups organized by management and labor as well as State and local officials. A plain language booklet describing WARN requirements was also produced and widely distributed. An initial printing of 100,000 copies of the booklet was distributed nation-wide by the Department, State and local governments, and management and labor organizations. A second printing of 35,000 also has been almost exhausted. The Office of Worker Retraining and Adjustment Programs continues to distribute the booklet to individuals inquiring about WARN.

As indicated in the report, WARN places no requirement on the Department except the promulgation of regulations and provides no funding. The Department did agree to respond informally to telephone calls. The Department informs callers (over 20,000 to date) of what is in the law and the regulations, and clarifies, where necessary and appropriate, certain provisions of the regulations. We also advise callers that WARN provided for the U.S. Courts to both administer and enforce the law; final decisions on WARN issues are to be made by the Courts, not by the Department of Labor.

We would point out that callers who have commented on the regulations have been consistently complimentary. They particularly appreciate the preamble which discusses the major WARN issues, provides the Department's position and explains the reasoning for the position. Callers generally want to discuss particular situations not specifically mentioned in the law or the regulations to assure that they are considering all statutory and regulatory provisions which relate to the particular situation. All callers who do not have them are offered copies of the law, the regulations, and the WARN booklet.

The Department commends the overall clarity of the WARN Report, but we question the presentation of your findings in Chapter 5, where the facts you describe sometimes conflict with headings and explanatory statements. The facts indicate that the predicted effects on employers have not occurred: only a minority of employers (29 percent) reported productivity decreases, and the only other significant adverse effect was "negative media coverage," (19 percent). The heading for Chapter 5 would be more accurate and helpful to understanding the law's effects if it read, "Employers Cited Benefits For Workers, Few Significant Negative Effects for Employers."

In the first sentence of Chapter 5 you say that, "WARN appears to have ... a negative impact on employers." GAO has not studied the net effect of WARN on employers; it can accurately report only on employer responses to its survey. WARN's net effects on employers might be positive. By getting laid off workers reemployed sooner, WARN may reduce the unemployment insurance costs for employers and create community goodwill. The law appears to promote orderly shutdowns that lead to reductions in productivity decreases (only 29 percent of employers report productivity decreases after giving advance notice). In addition, there may be other positive effects on employers that GAO has never considered. We urge you, therefore, to rewrite Chapter 5 to reflect more accurately the facts you have found.

The Department has no position at this time on whether it should be given the specific responsibility for enforcing the law's provisions. While it seems clear that the enforcement provisions of the law have not been adequate, we have not examined whether other alternatives, such as mandatory attorney fees for a prevailing plaintiff and the addition of liquidated or double damages for violations, would be sufficient to provide effective enforcement.

Sincerely,

Carolyn M. Golding

CAROLYN M. GOLDING
Acting Assistant Secretary

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Major Contributors to This Report

Human Resources Division, Washington, D.C.	Sigurd R. Nilsen, Assistant Director, (202) 512-7003
Detroit Regional Office	Robert T. Rogers, Assistant Director, Louis M. Ockunzzi, Evaluator-in-Charge Keith Landrum, Evaluator Lynda L. Racey, Evaluator Patricia A. Rorie, Evaluator Suzanne C. Sterling, Evaluator William G. Sievert, TAG Manager Sharon L. Fucinari, Programmer/Analyst Kathleen Ward, Programmer/Analyst

Related GAO Products

Employment Service: Improved Leadership Needed for Better Performance (GAO/HRD-91-88, Aug. 6, 1991).

Advance Notice: Public and Private Sector Policy and Practice (GAO/T-HRD-91-19, Apr. 18, 1991).

Employment Service: Leadership Needed to Improve Performance (GAO/T-HRD-91-4, Oct. 16, 1990).

Dislocated Workers: Labor-Management Committees Enhance Reemployment Assistance (GAO/HRD-90-3, Nov. 21, 1989).

Employment Service: Variation in Local Office Performance (GAO/HRD-89-116BR, Aug. 3, 1989).

Plant Closings: Limited Advance Notice and Assistance Provided Dislocated Workers (GAO/HRD-87-105, July 17, 1987).

Plant Closings: Information on Advance Notice and Assistance to Dislocated Workers (GAO/HRD-87-86BR, Apr. 17, 1987).

Dislocated Workers: Exemplary Local Projects Under the Job Training Partnership Act (GAO/HRD-87-70BR, Apr. 8, 1987).

Dislocated Workers: Local Programs and Outcomes Under the Job Training Partnership Act (GAO/HRD-87-41, Mar. 5, 1987).

Dislocated Workers: Extent of Business Closures, Layoffs, and the Public and Private Response (GAO/HRD-86-11BR, July 1, 1986).

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